194[illegible] File No. Bel. E.

Examined — Regd. DEPARTMENT

BRANCH

Subject:— Exits Belgaum ~~Limits~~.

C.S.Nos 150 of 1944. & 267 of 1947

C. numbers appear Survey nos

Form and shape of fields.

[illegible]

(1) The [illegible]

(2) Military [illegible] the Central Govt.

(3) [illegible]

(4) Possibility [illegible]

I am [illegible] possibility of [illegible] No 119 of Ittne-Bagewadi in Belgaum District.

P.H.B
E

File No. [illegible] 1/45

Std Sectt. Slip 24-B

S. Bel. 1/45

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Below correspondence ending with the Collector of Belgaum's No. L.A.W.-650 dated 12th October 1944 and papers of the case (in four files).

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No. L.S.T.-316.
Office of the Commissioner S.D.
Belgaum, 30th October 1944.

S u b m i t t e d.

Pp 1-2/ file II.

2. Mr. P.R.Chikodi, "Honorary Assistant Technical Recruiting Officer", Belgaum, applied to the Military Authorities on 5th January 1943 for the grant of S.No. 119 measuring 18 acres and 10 gunthas of Bagewadi, taluka Belgaum, which is entered in the village records as reserved for military camping ground. The application was forwarded by the Military Authorities to the Collector [redacted] file II. of Belgaum for disposal stating that they had no objection to the land being leased out to Mr. Chikodi subject to the condition that they should have the right of re-entry on the land at any time. The land was thereupon leased by Pp 21-22 file II. the Collector to Mr. Chikodi on 29th March 1943 on an annual rent of Rs 40/- for a period of 99 years subject to the right of the Military Authorities to enter on the land at any time.

Vide notice of suit at pp.45-49 File III.

3. Mr. Chanbasappa S. Patil and 6 others of Bagewadi contend that the land belonged to their predecessors-in-title and its disposal by the Collector contravenes the agreement which was entered into with their predecessors by Government in 1863-64 and which was embodied in the Collector's order forwarded under his outward register No. 108 of 1st March 1864 to the Mamlatdar of Belgaum taluka. They allege that the agreement was subsequently confirmed in 1910-11 and was to the effect that this land should not be given out to anybody for cultivation of crops and the grass grown therein should be allowed to be utilised by the owners free of assessment. They have accordingly filed in the Court of the First Class Sub-p 73-76 file I. Judge, Belgaum, a suit against (1) the Officer, Military Estates, Poona, (2) the Local Government and (3) the lessee for awarding possession of the land and future mesne profits.

4. So far as the defence of the suit on behalf of the Central Government is concerned, it would appear from the ~~P. 27 ante~~. Collector's report of 12th October 1944 that the Military Estates Officer, Poona, has obtained the sanction of the Central Government with a view to taking action under Rule 184 of the Law Officers Rules.

5. As regards the suit against the Provincial Government, the preliminary ground of defence will be that the suit is barred under Section 11 of the Bombay Revenue Jurisdiction Act inasmuch as the plaintiffs have preferred no appeals to the Commissioner or Government against the order of the Collector leasing the land to Mr. Chikodi.

6. The District Government Pleader, Belgaum, states that the suit can be defended if the agreement relied upon P. 5 ante. by the plaintiffs does not exist, but it will be indefensible in case an agreement of the kind referred to exists. In the remarks column of the Kamal Patrak, a copy of which is at page 1 of File IV, there is a note that according to the Collector's order No. 2293 dated 18th March 1910, the land in question should not be given out for cultivation to anybody. This remark

certainly lends support to the plaintiffs' assertion in the plaint that the agreement of 1863-64 was confirmed in 1910-11. The Collector was therefore asked to trace the references bearing his outward register No. 108 of 1st March 1864, 2293 of 18th March 1910 and also the agreement of 1863-64 relied upon by the plaintiffs, and, if necessary, to call upon the plaintiffs to produce the agreement and the orders referred to by them in their plaint. But the pleader for the plaintiffs has refused to produce any paper in support of the contentions made in the plaint and the notice of the suit. The Collector also reports that neither the agreement nor the references of 1864 and 1910 are traceable on Government records. In the absence of these papers, the suit will have to be defended on such material as is on record.

P. 1 of file IV.

7. The land measures 18 acres and 10 gunthas; it was entered as a Military Camping Ground in the Kamal Patrak of 1888-89 and has since been shown in the village records as an unassessed waste reserved as "Military Camping Ground". As the records show that the land has been entered as Government land, at any rate since 1888-89, it will be for the plaintiffs to prove, by such documentary evidence as they may be in possession of, that there was an agreement between their predecessors and Government in 1863-64.

8. Quite apart from the question of the defence of the suit however, the Collector's action in leasing this valuable land to Mr. Chikodi for 99 years without levying any amount as occupancy price is very irregular for the following reasons :-

(1) The land is entered in the village records as reserved for camping ground. The land having been so assigned, should not have been disposed of for 99 years before it was formally disassigned or got regularly surrendered by the Military Authorities.

(2) The land being unassessed, should have been assessed to agriculture before its disposal and the proper assessment, instead of rent, levied thereon.

(3) The lease is for 99 years and amounts virtually to an outright sale. The theoretical right of re-entry by the Military Authorities constitutes no diminution of full occupancy rights since the Military have not found it necessary to use this land for over half a century and even in the midst of two World Wars, and it is most unlikely that they will ever require it hereafter: Mr. Chikodi may be expected to be very well aware of this practical aspect of the matter.

(4) The land is situate close to the Poona-Bangalore road and is valued by the panchas at Rs 1,200. Considering the advantageous situation and its large area, there is no doubt that the land now has become most valuable and should not have been disposed of otherwise than by a regular public auction.

(5) Mr. Chikodi is not a self cultivator and it would be seen from V.F.VII-A that he has already leased the land to some one else for 10 years from 1943-44 for a rent of Rs 100/- and "Munda" of Rs 500/-; while he himself is to pay only Rs 40/- per annum to Government: this difference represents the net profit he secures every year for the next 10 years. All the improvements in rental value that may occur during the next 90 years or so accrue to Mr. Chikodi and not to Government !

460/-

9. The land has been entered in the village records as reserved for military camping ground. It is plain that taking advantage of his position as so called Honorary Assistant Technical Recruiting Officer Mr. Chikodi shrewdly approached the Military Officers, first, for the grant of this land. The land is, however, the property of the Provincial Government, and the rental derived therefrom is to be credited to the Provincial Revenue (vide letter No. B/34-II/40/M.E.O. dated 31.3.1943 of the Military Estates Officer). Such being the case, the Collector should not have leased the land for 99 years to Mr.Chikodi, free of occupancy price, only because the Military Authorities had no objection to such disposal.

P. 17 file III.

As shown above, this lease is open to objection from every point of view and completely ignores the financial interests of Government. For the strictly narrow issues raised by the civil suit against Government some sort of a good technical defence can no doubt be easily devised, but the bargain secured by Mr. Chikodi, is itself in the nature of a bad "ramp" and he ought not to be allowed to get away with it.

10. For these reasons the Commissioner strongly recommends that the lease for 99 years given by the Collector to Mr. Chikodi should be cancelled by Government in the exercise of its own powers of revision under Section 211 Land Revenue Code.

11. As the defence of the suit is to be sanctioned by Government in the Legal Department, a copy of this endorsement is being submitted to the Remembrancer of Legal Affairs. The papers of the case may be forwarded to that officer as soon as possible.

Sd/- V.S.Bhide,

H. Revenue Department. Commissioner S.D.

Copy submitted to the Remembrancer of Legal Affairs for the Government of Bombay, with reference to his No. 7193 dated 19th October 1944 to the Collector of Belgaum.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 9292
Sub No. A/2-11-44
Branch

Commissioner S.D.

Submitted with this for information
await Report under rule 118 of the L.R.C.
from R.D.
AAS
2-11
A.P.A
3/11

L.D.R.I.No.10281/44.
d/-. 4-12-44.

Submitted.

The facts underlying this rererence are briefly as follows:

S.No.119 of Bagewadi which is shown as a military camping ground but which vests in Government was ordered to be leased to one Mr.P.R. Chikodi, Honorary Asstt.Tech. Recruiting Officer for a term of 99 years on an annual rent of Rs.40/- or such enhanced rent as the Collr. shall from time to time levy (vide Collr.'s order d/-.29-3-1943 at p.21 file II). A lease was then duly executed on 10th April 1943 (p.51 file II). This lease was then cancelled and a fresh lease wherein the rent was fixed at Rs.40/-, was executed on 23rd June 1943 (vide p.33 file III). This fresh lease deprived Govt. of the right to enhance the rent.

After the lease was executed, one Mr.Chanbasappa S. Patil & 6 others of Bagewadi gave a notice of suit to the Collr. of Belgaum under sec.80 of C.P.C. in connection with the leased land. In the notice they alleged that the S.No.119 originally belonged to ~~them~~ their predecessors-in-title and was taken by Govt. as a military camping ground under an agreement executed in 1863 and subsequently embodied in the Collr.'s order dated 1.3.1864. It is contended that the agreement was to ~~be~~ the effect that the land should not be given out to anybody for cultivation or crops and that the grass grown therein should be allowed to be utilised by the owners free of cost.

(Please see notice of the suit at pp.45-47, file III). On receipt of the notice, the District Govt. Pleader, Belgaum was consulted. He opined that the action complained of would appear indefensible if the alleged agreement exists. The alleged agreement, however is not traceable in the Collr.'s office. The Pleader of the plffs. is also reluctant to produce the agreement before the Collr. but is willing to produce it before the Court as the suit has now been filed. The whole case depends on the existence and the terms of this agreement and in the absence of it in the records it would not be possible to say how far the suit would be defensible.

*p. 5 ante.

*p. 23 ante.

As has been noted above, the suit has been filed. (1) The Govt. of India (2) the Province of Bombay and (3) Mr.P.R. Chikodi have been made defendants. As far as the Govt. of India is concerned, it has accorded sanction to the defence of the suit (vide p.21 ante). The Collr. of Belgaum intends to defend the suit and has submitted the papers to the Govt. through the Commr. S.D. and the R.D.

In connection with this case R.D. is of the opinion that the lease that has been granted should be cancelled. But as a suit has been filed R.D. wants R.L.A.'s opinion on the point whether the lease should be cancelled during pendency of the suit which challenges Govt.'s right of ownership over the land. Please see the notes by D.S. R.D. and Jt. Secy. R.D. at pp.37-38 ante, which state the Govt.'s view in the matter.

Two questions have been raised [in those notes] for R.L.A.'s consideration. They are:

(1) Whether the suit is defensible;

(2) Whether Govt. should cancel the lease before the suit comes up for hearing.

As regards the first question the answer appears clear. The whole case depends on the alleged agreement. The D.S. R.D. wants that Govt. should try to establish sole ownership over the land. If this is to be achieved, the suit would have to be defended, the plff.'s title would have to be denied and the plffs. should be required to establish their title by producing the necessary documents.

As regards (2), it appears that Govt. can take steps in the matter after the present suit is decided and if the decision is in its favour. If the decision goes against Govt., the lease would be automatically cancelled.

28/8
8/12

AS

A Plaintiff alleges an original title, a transfer to the Government on certain conditions, a breach of those conditions and a consequent right in the plaintiff to resume possession as owner. The plaint does not mention the persons in whom the title vested at the time of the alleged transfer, nor does it describe how plaintiff is entitled to claim under them. Secondly, the suit is evidently founded upon the agreement of transfer, but the agreement or a copy thereof has not been filed with the plaint as required by Order 7, rule 14(1) of the Civil Procedure Code. The District Government Pleader will therefore have to apply to the Court and call upon the plaintiff to describe his title and to produce the agreement or other document relating thereto which is in his possession or power.. At the most Government will have to state in such application that the alleged agreement and the order of 1st March 1864 are not in its possession. Until the application is decided Government will not be in a position

file I
page 73

to formulate its defence adequately. Nevertheless on general principles it appears that if there really was a transfer of property to Government by the plaintiff's predecessors, a restriction as to use of the land in a particular manner would no longer be legally binding on the Government; see section 11 of the Transfer of Property Act. It is however not possible to answer the first question put by R.D. until the information referred to above is obtained from the plaintiff through the Court. The District Government Pleader will be directed to take the necessary steps on return of these papers from R.D. A

As regards the second question, I agree with Mr. Rege. Moreover B a cancellation of the lease pending suit is likely to be misunderstood as an admission of defective title. In particular the cancellation would be construed, till a fresh lease is granted, as an attempt to meet the plaintiff's immediate grievance which is that a lease for agricultural purposes is in breach of the alleged agreement of transfer. It is hence inadvisable to cancel the lease pending suit. The written statement to be filed in the suit on behalf of Government would say that Government was entitled to grant a lease for cultivation purposes, but that it reserved to itself the right to terminate the lease granted to Mr. Chikodi either under the general law or under the particular terms of the lease. This would prevent any question of res judicata between co-defendants. B

The R.D. proposes to call for certain information from the Collector. That information will be required by this ~~defendant~~ department also for sanctioning the defence of the suit. The R.D. may be requested to send it along with other papers to this Department.

Dr
11/12

A's note is clear. I think the D.G.P. should be instructed to apply as suggested at 'A' of the note + time should be taken for filing the written statement. I am inclined to the view that it is unobjec. 12/12/44 tionable to cancel the lease, as suggested by the Commr S.D., as the pltffs. are claiming possession of the land on the basis of an alleged agreement not to let out the land, and if such an agreement was in fact entered into, the legal position will not be affected whether the lease is cancelled or not. If the lease is not cancelled ...

A A.L.R. B

~~R.L.A.~~

O. S. No.150 of 1944.

In the Court of the First Class Sub Judge, Belgaum.

1. Chanbasappa Shivraigauda Fadi Patil of Hire-Bagewadi and 6 others. | Plffs.

Vs.

1. Central Govt. of India
2. The Province of Bombay | Defts.
3. Pandit Rayappa Chikodi

Claim Rs.

In this the written statement of Deft.No.1 - the Central Government is as under :-

1. The land in suit is the property of the Government of Bombay and does not belong to the Central Government.

2. The Central Government of India should not have been made a party.

3. The suit against the said defendant should therefore be - dismissed with costs.

Belgaum,
th January 1945. Dist.Govt.Pleader, Belgaum.

I, V.A.Mujumdar, District Govt. Pleader, Belgaum, do hereby state on solemn affirmation that what is stated above in - paras 1 to 3, is true as per information received and believed to be true. Dated this day of January 1945.

District Government Pleader, Belgaum.

Submitted.

Next date fixed for filing W.S. in Belgaum Civil Suit No. 150 of 1944 is 5-1-1945.

9/5/12.

P.A.

In the Court of the Subordinate Judge, First Class, Belgaum.

1. Chanbasappa Shivraigauda Fade, Patil of Hire Bagewadi & 6 others. | Plffs.

Vs.

1. The Secretary to Govt., Military Department of Central Govt. Delhi.
2. The Province of Bombay.
3. Pandit Rayappa Chikodi. | Defts.

Claim Rs.

Written statement.

Defendant No.1, the Central Govt., submits -

1. That this deft. is misdescribed in the plaint: the correct description should be " The Governor-General in Council".

2. (a) That the land in suit is not vested in the Central Govt.
(b) That the lease to defendant 3 was not granted by the -- Central Govt.(and that the recital in the lease deed to the contrary is incorrect).
(c) That this deft. has been wrongly impleaded in this suit.

3. That this deft. has no knowledge whether the allegations in paragraphs 1,2,3 and 4 of the plaint are correct and so does not admit them.

4. That this deft. did not lease the land in suit to deft.3 as alleged in paragraph 5 of the plaint. That the allegation about taccavi loan is not admitted (for want of knowledge).

5. That the allegations in paragraphs 6 of the plaint are not relevant, so far as this deft. is concerned, but receipt of a notice is admitted.

6. That paragraph 7 is denied for the plffs. have no cause of action against this deft.

7. That the meaning of paragraph 8 of the plaint is not clear. If it is meant that some officer of the Central Govt., and not the Central Govt. itself, is being sued, then, it is sumitted the suit as against deft.1 is misconceived.

8. That this deft. takes no exception to pagraphs 9,10 and 11 of the plaint.

9. That the claims in paragraph 12 of the plaint are denied.

10. That the suit is liable to be dismissed and that this deft. is entitled to costs against the plffs.

Sd,
Mily. Estates Officer, Poona Circle, Poona, for the Governor-General in Council.

Verification

x x x

Poona,
Dated 4-1-1945.

Sd.
Mily, Estates Officer,
Poona Circle.

Civil Suit No.150 of 1944.

In the Court of the First Class Sub Judge,

At Belgaum.

1. Chanabasappa Shivaraigauda Fade Patil of Hire-Bagewadi and 6 others. } Plaintiffs.

versus.

1. The Secretary to Government Military Department of Central Government, Delhi.
2. The Province of Bombay.
3. Pandit Rayappa Chikodi. } Defendants.

Claim Rs.

In this, the written statement of Defendant No. 2. - the Province of Bombay, is as under:-

1. This defendant denies the plaintiff's claim.
2. This defendant does not admit the allegations of plaintiffs in paras 1 to 4 and puts the plaintiffs to strict proof of the same.
3. The allegations in para 5 of the plaint so far as the breach of the alleged agreement and the raising of the loan etc., are concerned are denied by this defendant. He however admits that the said land is leased to defendant No. 3 on 99 years lease on certain conditions.
4. This defendant does not admit the allegations in para 6 of the plaint. This plaintiffs have no right to demand back the possession of the land from Government.
5. The land in question is the property of this Defendant No.2 and the Collector has a right to dispose of the same, and he has done so under the Land Revenue Code, by leasing it out to Defendant No.3, on 10th April 1943. The plaintiffs or their predecessors in title have no right what-so-ever to the land and even if they had, the same is extinquished, the land being shown in Government records as Government property at least since 1888, and it has never been in enjoyment of occupation of the plaintiff or their predecessors in ~~xhix~~ title since then.
6. The suit is barred under Section 11 of the Revenue Jurisdiction Act, since the plaintiffs failed to prefer all the

the .

the appeals against the order of the disposal of property by the Collector, available to them during the period of limitation, before filing the suit.

7. The plaintiffs have no cause of action against this Defendant.

8. Plaintiffs are not entitled to the reliefs claimed by them in paras 12 of the plaint.

9. For the reasons stated above, the suit should be dismissed. with costs.

---

Belgaum,
Dated 20th February 1945.

District Government Pleader,
Belgaum

I, V. A. Mujumdar, Esquire, District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 9 above is true according to the information received and believed to be true. This verification is made at Belgaum, this 20th day of February 1945.

District Government Pleader,
Belgaum.

This relates to Belgaum C.S. No.150 of 1944. The Collector disposed of S.No.119 of Hire-Bagewadi in Belgaum District set apart as camping ground for troops by granting a lease to defendant 3 for the purposes of cultivation. The plaintiffs contend that the land belonged to their family, that it had been granted to the Govt. in 1863-4 for use as camping ground for troops only and that on account of the disposal for purposes of cultivation they are entitled to terminate the grant and resume possession of the land. They therefore sue for possession.

There is no evidence available in Govt. records of any agreement or grant as alleged in 1863-4 and the plaintiffs have so far not produced any. Even assuming that the land was obtained by Govt. in 1863-4 from plaintiffs' predecessors, Govt. yet cannot be deemed have been a mere licensee. The land has throughout been shown in revenue records as Govt. land. Lastly even assuming that Govt. first occupied the land as licensee, it can be contended that the license ceased long ago and that Govt's possession all these years has been adverse to the true owners.

Sanction may be accorded to the defence of the suit on the lines of the appended brief. A written statement has been filed already; please see at pages 60-62.

29/6

RLA 6/7

RLA 6/7/45

Sec. R.D. 9.7.45

x No 5028
d. 9-7-45

# I S S U E S.

1. Is the Central Government correctly described in the plaint? If not, is the suit as framed against it maintainable ?
2. Do plffs. show that there is any cause of action against the Central Govt. as the land in suit does not vest in it, but vests in the Province of Bombay; and as the lease complained of is not alleged to have been granted by the Central Govt.
3. Is the suit brought against an officer of the Central Govt. maintainable ? Is the misdescription in the plaint material?
4. Do the plffs. prove the allegations regarding the suit land made in para 2 of the plaint and do they prove the agreement alleged in para 3 of the plaint ?
5. Do the plffs. prove that they and their predecessors-in-title were enjoying the grass grown in the suit land ?
6. Do the plffs. show that the alleged agreement of 1863-64 was confirmed in 1910 ?
7. Do plffs. prove the breach of agreement alleged in para 5 of

the plaint ?

8. Do plffs.prove that they are entitledto claim the possession of the suit land from Defts.nos. 1 and 2 ?

~~9. Do plffs prove that they are ent~~

9. Is not the suit barred by limitation in view of the facts alleged in para 5 of the written statement of deft.no.2 ?

10. Is not the suit barred under Sec. 11 of the Bombay Revenue Jurisdiction Act in view of the allegations in para 6 of the written statement of deft.no.2 ?

11. Is there any cause of action against deft.no, 2 ?

12. What relief ?

No more sought.

Sd. D.R.Ugrankar.

20-7-1945. Joint Civil Judge,S.D.

A *Suits.*

Belgaum.

For recovery of possession of suit property, Survey No. 119 of Hire-Bagewadi in Belgaum District.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5168.

Bombay Castle, 13th July 1945.

Letter from the Collector of Belgaum, No. L.A.W. 650, dated the 3rd August 1944—

B IN THE COURT OF THE FIRST CLASS SUB-JUDGE, BELGAUM.

Civil Suit No. 150 of 1944.

Chanbasappa Shivraigauda Fade and six others — Plaintiffs;

*versus*

The Secretary to Government; Military Department of Central Government; The Province of Bombay; Pandit Rayappa Chikodi ... — Defendants.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence

D

Endorsement by the Commissioner, Southern Division, No. L.S.T. 316, dated the 30th October 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 5167, dated the 13th July 1945—Forwarding a copy of the brief with its accompaniments in advance.

[*P.T.O.*

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R. No. 5168, L. D., dated the 13th July 1945.

Issued
14/8

To

*The Revenue Department,
*The Commissioner, Southern Division
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Submitted after issue
2- File no S. Bel: 1/45 (new file)

15-8
PAP 17/8/45

BELGAUM CIVIL SUIT No. 150 OF 1944.

*Chronological Statement of Facts.*

Plaintiffs sue to recover possession of the suit property from (1) the Central Government, (2) the Province of Bombay; and (3) Mr. P. R. Chikodi.

2. The suit property is Survey No. 119 of Hire-Bagewadi in Belgaum Taluka measuring 18 acres 10 gunthas and was unassessed waste land in the occupation of Government set apart for use as a military camping ground.

p. 1, file II — 3. On 5th January 1943, Mr. P. R. Chikodi (defendant No. 3) applied to the Officer Commanding, Belgaum Military station for a lease of the land for 99 years for the purposes of cultivation at an annual rent of Rs. 40 subject, *inter alia*, to the condition that the Military Authorities may enter upon and occupy the land at any time for camping purposes without being liable to pay any compensation to the lessee for the period of occupation.

p. 3, do. — 4. On 5th February 1943, the Military Estates Officer forwarded the application to the Collector of Belgaum stating that the land belonged to the Provincial Government and that the Military Authorities had no objection to the lease applied for subject to the condition as proposed.

p. 13, do. — 5. One V. C. Charanti also on 5th February 1943 applied to the Collector of Belgaum for a lease of the same land for the purposes of a poultry farm.

p. 6, do. — 6. The land was valued by the *panchas* at Rs. 1,200.

p. 21, do. — 7. On 29th March 1943, the Collector made an order granting a lease to Mr. Chikodi. The lease was executed by Mr. Chikodi before the Prant Officer on 10th April 1943.

p. 51, do.

p. 31, do. — 8. On 6th May 1943, the Collector made an order to the effect that a fresh lease should be executed showing the rent to be payable to Government instead of to the Military as was stated in the lease of 10th April 1943. Accordingly

p. 33, file III — Mr. Chikodi executed a fresh lease before the Prant Officer on 23rd June 1943, and the lease of 10th April 1943 was cancelled.

p. 45, do. — 9. On 28th October 1943, the plaintiffs addressed a notice of suit under section 80 of Civil Procedure Code to the Collector of Belgaum.

10. This suit was filed on 10th April 1944.

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*Grounds of Defence.*

The plaintiffs allege an original title, a transfer of possession to Government on certain conditions, a breach of those conditions and a consequent right in the plaintiffs to resume possession as owners. As to the original title the plaintiffs will have to prove who were the owners of the land in 1863 and further that they are successors-in-title of those owners. Unless these two matters are proved the plaintiffs cannot maintain this suit.

2. The plaintiffs allege that there was an agreement in 1863–64 and the terms of that agreement according to the plaintiffs are set out in paragraphs 3 of the plaint. There is no evidence available in the Government records about the alleged agreement and the plaintiffs will therefore have to adduce strict proof not merely of the fact of some agreement but of the particular terms thereof. So far the plaintiffs have not produced any documents evidencing the agreement but they allege in the plaint that the "arrangement" of 1863–64 was confirmed in 1910. There is an entry of 1910 in the Kamal Patrak and the plaintiffs probably want to suggest that this entry refers to the earlier agreement alleged by them. The entry runs thus: "The said land should not be granted for cultivation to others as per Collector's order No. 2293 of 18th March 1910 and Mamlatdar's order No. 1210 of 7th April 1910." It is clear that not only does this entry not refer to an agreement of 1863–64 or of any other date but that there is proof that the Collector's order referred to in the entry was passed in very different proceedings. A copy of the Collector's order in question is at

page 17; File IV of the Collector's papers. It shows only that one Mr. Sholapurkar had applied for a grant of the land and that the Collector declined to make the grant on the ground that the land was set apart as a camping ground for troops and could not be given out for cultivation to anybody. The order shows that even in 1910 the land was treated as Government land and even then the Collector did not know of any earlier agreement restrictive of the Government's rights about the land. The entry of 1910 which appears in the Kamal Patrak therefore does not support the plaintiffs and there is no evidence of the agreement of 1863-64. The District Government Pleader's attention may also be drawn to a statement in the notice of suit to the effect that the agreement between the owners and the Government was embodied in the orders of the Collector dated 1st March 1864. Thus even assuming that the plaintiffs are able to produce the Collector's orders of 1st March 1864, this would be the sole evidence of the agreement and any attempt to add conditions which are not stated in the Collector's orders would be unjustified in law.

3. Assuming an agreement as set-up by the plaintiffs is proved, the next question is about the true nature and effect of it in law and about the plaintiffs' present power to resume the grant. Under section 11 of the Transfer of Property Act if there was a transfer of property to the Government the condition (*d*) of the agreement as set out in paragraph 3 of the plaint providing that the land could not be used for cultivation would be void altogether and not binding on the Government. But the plaintiffs may probably contend that Government was a mere licensee allowed to occupy the land for a specified use. Under section 52 of the Easements Act if the grantees' rights amount to an interest in the property the right cannot be called a license. Further section 60 of the Easements Act provides that a license may be revoked by the grantor unless it is coupled with a transfer of property and such transfer is in force. Reading these two sections together it should be contended that there was no license or that it cannot be revoked. It is admitted in the plaint that Government took possession of the land and constituted it as a separate survey number. At all times the land has been shown in revenue records as Government land. There is nothing to show in the agreement as stated by the plaintiffs that the original owners' names were to be retained in the revenue records. There is no evidence at least after 1888 that any objection has been taken to the land being shown as Government land in the records. It might be inferred that the agreement did not reserve ownership itself for the grantors. The plaintiffs may probably rely on condition (*c*) of the agreement set up by them which permitted the original owners to cut grass from the land. The allegation that the plaintiffs have been taking grass from the land in accordance with this condition should be denied. In any case the agreement as set up was to remain in force in perpetuity and it can only be construed as having been intended to create and as actually having created an interest in land in favour of Government. The plaintiffs therefore cannot claim to resume possession on the mere ground that the land has been put to cultivation.

4. It also appears that the plaintiffs' suit will be barred by limitation. It may be conceded that so long as a license is in force there cannot be adverse possession. But if the licensee continued in possession after the expiry of the license and to the knowledge of the grantor, the licensee's possession must be held to be adverse. Under the Easements Act the license is of a personal character not merely as regards the grantee but also as regards the grantor. It ceases the moment the property passes to another from the grantor whether by inheritance or otherwise. The heirs of the grantor may treat the licensee as a trespasser and eject him without notice of revocation; *see* the cases 49 Indian Cases 811 and A. I. R. 1922 Nagpur 162 quoted in the Annotations on section 60 in the Civil Court Manual (M. L. J.); also page 489 of the Law of Easements by Amin and Sastry and section 59 of the Act. Secondly clause (*f*) of section 62 provides that a license

is deemed to be revoked when it is granted for a specified purpose and the purpose is attained or abandoned or becomes impracticable. Clause (*h*) similarly provides that a license is deemed to be revoked when it totally ceases to be used as such for an unbroken period of 20 years and such cessation is not in pursuance of a contract between the grantor and the licensee. It appears that in the last half century and more and in the midst of two world wars there has been not a single occasion for the Military to occupy the suit land as a camping ground. So whether or not the land was used for that purpose in 1863–64 when the alleged license was granted it is clear that it was not necessary either for the grantors or the Government to keep the license in force all these years. It must therefore be held that the plaintiffs cannot rely on a license which was granted by their predecessors as long ago as 1863 and which must clearly be deemed to have been recorded much more than 12 years before the suit.

5. Lastly a few words should be said about the lease granted to defendant No. 3. The subject-matter of this suit is the plaintiffs' right to the land and it does not include

the relations between Government and defendant No. 3 and their respective rights and liabilities with reference to the lease granted to defendant No. 3. The lease itself expressly provides that it had been granted subject to the provisions of the Bombay Land Revenue Code and Rules in force thereunder. Similarly the written statement states that the land is the property of Government and that the Collector has disposed of it under the Land Revenue Code by leasing on certain conditions. The District Government Pleader should also further see and make it clear to the Court that it is only the plaintiffs' title that is in issue in this suit. The relations between the Government and defendant No. 3 are outside the scope of the suit. Any attempt by either the plaintiffs or the defendant No. 3 to discuss those relations would be undesirable. If the plaintiffs succeed in proving their right, defendant No. 3 who only claims under Government will have no interest in the land left in him. The District Government Pleader should hence consider this aspect, both at the time of settlement of the issues and at the hearing of evidence.

New file
S. Belgaum/45
18/8/45

O.S.150/1944.

In the Court of the Joint C.J.(S.D.)Belgaum.

1. Chanabasappa and others .. ... ... Plffs.
Vs.
1. Central Govt. ... ... ... ... ... .. Defendant.

Herein, the application for amendment on behalf of th plff.no.5 is as under:-

All the plffs.in this suit do not belong to the same family. They are the owners of different lands and hence,they are entitled to claim their respective shares in the suit land. They did not claim their respective shares in the suit, land through over-sight. As the plffs are poor agriculturists they did not know the law. The plffs. filed this suit for joint possession only as they had no correct information and they also could not instruct property at the time of filing this suit. ~~xxxx~~ As it is now found necessary and proper to claim separate shares, the prayer in the prayer--column No.12(A) in the plaint may kindly be amended as follows:-

Add " joint or respective separate shares after partition" between the words "plffs." and "should be given".

There would be no change in the nature of the suit if the plaint is amended accordingly and hence,it is prayed that the plaint may kindly be amended.

Sd.Gurubasaya Chanabasaya
Hiremath.

22.2.1946.

D.& P. by
Sd.B.N.Datar.
Pleader.

True Translation
V.A.
D.G.P

Regular Civil Suit No. 150 of 1944.

Below Ex. 1, the plaint.

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On the plaintiffs' application exh. 120, the defence not objecting, the plaintiffs are permitted to withdraw from this suit with liberty to institute a fresh suit in respect of the same subject-matter. The plaintiffs do pay the costs of the defendants - one set of pleader's fee to defendants Nos. 1 and 2 and one set ~~de~~ to defendant No. 3- and such payment shall be a condition precedent to the institution of a fresh suit : Order XXIII rule 1(2) Civil Procedure Code: Plaintiffs do bear their own costs.

Sd.D.R.Ugrankar.

7.3.1946. Civ.Judge,S.D.Belgaum.

Bill of Costs.

Bill of Costs

31

99-A 95-A

1944

Suits :
Belgaum.
For recovery of possession of suit property, Survey No. 119 of Hire-Bagewadi in Belgaum District.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1131 —
Bombay Castle, 21st November 1947.

Read Government Resolution, Legal Department, No. 5168 dated the 13th July 1945.

Letter from the District Government Pleader, Belgaum, No.O S 150/44(OS 247/47 dated the 3rd November 1947, stating that the suit noted in the margin was decided by the Civil Judge Senior Division, Belgaum, on 7th March 1946, when the following order was passed:-

| | |
|---|---|
| In the Court of the First Class Sub-Judge, Belgaum. | |
| Civil Suit No. 150 of 1944. | |
| Chanbassappa Shivralgauda Tade and others. ..... Plaintiffs; | |
| vs. | |
| The Secretary to Government; Military Department of Central Government; The Province of Bombay; Pandit Rayappa Chikodi..Defendants. | |

> On the plaintiffs' application exh. 120, the defence not objecting, the plaintiffs are permitted to withdraw from this suit with liberty to institute a fresh suit in respect of the same subject-matter. The plaintiffs do pay the costs of the defendants - one set of pleader's fee to defendants Nos. 1 and 2 and one set to defendant No. 3 and such payment shall be a condition precedent to the institution of a fresh suit: Order XXIII rule 1(2) Civil Procedure Code : Plaintiffs do bear their own costs."

RESOLUTION. - The result of the suit is recorded.

By order of the Governor of Bombay,

Original R M Mehta

R. M. Mehta,

Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, Sourthern Division,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Submitted for signature
orders at p. 20 ante
22/11

A.S.

issued
21/4

98

26

submitted after issue with reference to A.S with at pps 18 & 20 ante.

25/11

A.S The Collector may now be requested to forward the report for the defence of Suit No. 267 of 1967 under Rule 118 of the Rules

25/11

Reg.O.S.267/47.

In the court of the Civil Judge,S?D?,Belgaum.

1.Chanbasappa Shivarayappa Fadi-Patil,
age 30,Ling.,agri.,of Bagewadi,Tal.Belgaum.

2. Fadigouda Shidramgouda Fadi-patil,32,rest do.

3. Basawanneppa Subrayappa Fadi-Patil,45,-do-

4.Demangouda Gurapgouda Fadi-Patil,30, -do-.

5,Baswantgouda Basagouda Fadi-Patil,45,-do-.

6.Shidlingappa Fadeppa Ghaniger,42,rest -do-.

7.Gurushiddappa Bhimappa Ghaniger,age 40,-do-.

8.Chambasawa alias Chambawwa.w/o.Basawanneppa Ghaniger,age 42,-rest,do.

9.Gangawwa w/o.Nayappa Ghaniger,41,rest do.

10.Chanabasappa Chanabasappa Ghaniger,37,do.

11.Gurubasayya Chanabasayya Mathad alias Hiremath,age 42, rest do.

12.Rachayya Gurushiddayya Mathad alias Hiremath, age 57M,rest do.

13.Fadeppa Rudrappa Barigidad,age 35,do.

14.Shingawwa w/o.Basawanneppa Mangalgatti, aga 40,-rest do. ... ... ... ... Plaintiffs.

Vs.

1. The Province of Bombay by its representative the Collector of Belgaum.

2. Pandit Nayappa Chikodi, age 60,ling-, Journalist,of Belgaum Sheri Galli.

3.Baswantappa Shiddappa Kapari,age 42,ling., of Hire-Bagewadi, Belgaum Taluka ... ... Defendants.

Value for court fee and Jurisdiction ... ... Rs.300/-.

In this, the plaintiffs above-mentioned beg to state as follows :-

1. Description of the property in suit:-

Land situate at Bagewadi in Tal.Belgaum:-

| R.S.No. | Acres-Gunthas. | Assessment. | Value. |
|---|---|---|---|
| ...9 | 18-10, | Nil. | Rs.300/-. |

2. The above land formerly belonged to the ancestors of predecessors-in-title of the plaintiffs mentioned above, who then owned entire Revenue Survey Numbers from which

pieces were carved out, forming a contiguous piece of land which was numbered separately as Revenue S.No.153, which corresponds with the present Revision S.No.119 in suit. The chart produced with the plaint shows the former entire Survey numbers and the suit-survey number carved out of them: The following table shows the areas carved out from the several survey numbers:-

| Revenue S.No. | Area A.G. | Portion carved out. | Portion remaining. | S.Nos. given to remaining portion. | Present Survey No. |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | A.G. | A.G. | | |
| 69 | 21.14 | 0-38. | 20-16 | 69 | 116 |
| 70 | 19-39 | 8-21 | 11-18 | 70 + 154 | 120 + 117 |
| 73 | 19-38 | 8-36 | 11-2 | 73 + 155 | 125 + 118 |
| 74 | 16-35 | 3-11 | 13-24 | 74 | 126 |
| 76 | 4-34 | 0-5 | 4-29 | 76 | 127 |

3. Under an agreement entered into between the then owners and the Govt., and subsequently embodied in the orders of the Collector of Belgaum dated 1-3-1864, the suitland was, under a licence from the then owners, taken by Govt. for using it as a Military camping ground. It was stipulated that the suit land was not to be used for or allowed to be used for cultivation and growing of crops; that the grass growing thereupon was to be utilised by the then owners; that a portion of the assessment corresponding to the area taken for military purposes as stated above was to be deducted from the total assessment levied on the original entire lands from which the suit land was carved out; and that the suit-land was to be used only as a Military camping ground by Govt. and was not to be let out to others for any purpose whatsoever. Accordingly since then, the suit land has been shown in the Revenue Records as land reserved for Military camping purposes; and was being used only as a camping ground, the owners for the time being taking the grass as settled in 1864. The ownership of the suit land had not passed to Govt., who were mere licensees in respect of it, having been allowed to use it, for the specified purpose stated above.

4. Recently however, Govt. abandoned the purpose for which the land was taken and unauthorisedly began to divert its use

for other purposes. so the plaintiffs became entitled to revoke and have so revoked the license granted to Govt.in 1864. Govt. have violated the terms of the licence and have let out the suit land for agricultural purposes to deft. No.2 for a period of 99 years under the Orders of the Collector of Belgaum, in No.L.G.L.638, of 29th March 1938. Plaintiffs came to know of this unwarranted lease, a considerable time thereafter. Neither the Collector of Belgaum nor any other officer of Government had any right to commit a breach of the terms of the original licence granted to Govt.and lease the suit land to others for cultivation or other purposes. The orders and actions of the Collector of Belgaum in letting out, on the recommendation of the Military Estates Officer, Poona Circle, the suit land to deft.no.2 ignoring the terms of the original agreement are wholly illegal, unauthorised and void. By this unauthorised act the proprietory rights of the plaintiffs are seriously jeopardised. Their right to take the grass growing upon the suit land is seriously affected thereby. The -- licence being thus revoked the plffs.are entitled to claim possession and enjoyment of the land in any way they pleas as full owners. The plffs.have served the deft.no.1 with the requisite notice under Sec.80 C.P.C.and this suit has been filed after the expiry of two months of the service of the said notice.

5. The deft.no.2 is a lessee from the defendant no.1, and deft.no.3 is a sub-tenant of deft.no.2. The Tagavi loan incurred by deft.2 is not binding on the plffs. The defts. 2 and 3 are impleaded as they are liable to hand over possession of the suit land to plffs.with mesne profits.

6. The present plffs.are the representatives in interest of the owners of the S.Nos.out of which the suit-land was formed; hence they have filed this suit jointly for possession of the whole of the land in suit. However, if it turns out that the present plffs.are not entitled to possession of the entire suit land, then the plffs.claim alternatively as below:-

(i) Plff.nos.1 to 5 are entitled to possession of portion marked C H I map no.1 in the Chart,which is equal in area to the total area of Rev.S.No.69 minus the area of R.S.No.116.

(ii)Plffs.Nos.6 to 10 are entitled to possession of portion marked F G H I B in this said map,which is equal to the total area of olf Rev.S.No.70 minus the area of R.S.Nos.120 Plus 117.

(iii) Plffs.Nos.11 & 12 are entitled to possession of the portion marked E F G D in the said map,which is equal to the total area of old Rev.S.No.73 minus the area of R.S.Nos.125 Plus 118.

(iv) Plffs.Nos.13-14 are entitled to possession of the portion marked A D E in the said map which is equal to the total area of old revenue S.No.74 minus the area of R.S.No.126.

These portions can be ascertained and measuredby appointing an expert officer in the Survey Dept,by referring to the appropriate records regarding the said Revenue and Revisional Survey nos.

The chart produced with this plaint is to be treated as part of the plaint.

7. The cause of action for this suit arose some time in July1943 when plffs.came to know about the unwarranted lease by Collector,Belggaum .

8. The land in suit is situate within the local jurisdiction of this court and as the Province of Bombay is a party to this suit,it is to be heard as a Special Jurisdiction Suit.

9. Notice of this suit under Sec.80 C.P.C.was served on Collectof of Belgaum on 8.7.46 and this suit has been filed two months after receipt thereof

10.The value of the suit for court-fee is as follows:-The land is not assessed to payment of land revenue.It is a fallow land and is worth Rs.300/-.Hence,court-fee has been paid on Rs.300/- for the main relief of possession the prayer for declaration being subsidiary to it.

The value for Jurisdiction is also Rs.300/=.

11. The plaintiffs pray as below :

(i) A decree for possession of the suit land free from encumbrance may kindly be passed in favour of the plffs.,after declaring that the lease executed by deft.no.1in favour of deft.no.2, was in violation of the terms of the agreement of licence under which the suit land was taken by Govt.in 1863-64 and was therefore invalid as against the plaintiffs.

(ii) If possession of the entire land cannot be given to the plaintiff, then the respective portions of the various plaintiffs in the suit-land; as set out in para 6(i) to (iv) above, may be ascertained by appointing an expert officer in the office of the Collector or Land Records Department, Belgaum, and the separate portions thus ascertained be delivered to the respective plaintiffs entitled to them.

(iii) Future mesne profits be awarded to the plaintiffs from the date of the institution of this suit.

(iv) Plaintiffs may be awarded costs of the suit and such other reliefs to which they may be found entitled to, or which the court deems fit to award.

(v) Permission may be given to amend the plaint, if found necessary.

Signed and dated 2-7-1947.

Drafted & Presented by

Sd.C.D.Gumaste.

2.7.Pleader.

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LETTER.

To

The Commissioner,
Southern Division, Belgaum.

Subject:- Regular suit No.287-47, on the file of the Civil Judge, Senior Division, Belgaum.

Reference:- G.R., L.D., No.11151, dated 21-11-1947.

NO.L.A.W.-699. Belgaum, 6th Jan. 1948.

Regular suit No.150-44, was originally filed by seven plaintiffs in the court of the Civil Judge, S.D., Belgaum. That suit was permitted on 7-3-1946 to be withdrawn, with liberty to institute a fresh suit in respect of the same subject matter.

2. The present suit (No.287-47 filed by fourteen plaintiffs on 2-7-1947) is in respect of the same subject matter of suit No.150/44. The defence of the said previous suit (150-44) was sanctioned by Government under G.R., L.D., No.5168, dated 18-7-1945.

3. The R.L.A. may kindly be requested to communicate his instructions for defence of the present suit (No.287-47) under rule 123 L.O.R. The notice of suit is at page 1 to 4 of File V. A copy of the suit now filed and a copy of the District Government Pleader's opinion No.A.86/47 dated 23-12-47 are attached.

4. The District Government Pleader is being requested to take a long adjournement till instructions to defend the suit are received.

5. Papers in five files accompany.

Collector, Belgaum.

. . .

D.S.L.

Copy w.cs. to the Remembrancer of Legal Affairs, Bombay, with reference to his No.13197, dated 20-12-1947.

Copy w.cs. to the District Government Pleader, Belgaum, with a request to take a long adjournement till instructions are received.

SECRETARIAT TO GOVERNMENT
LEGAL DEPARTMENT
File No. 408
T2 -1-48
Branch A

Submitted with reference to this office letter at page 33 ante calling for the Collector's report for the defence of C.S. No. 264 of 1994.

The Collector has now forwarded an advance copy of his report that the respondent's/Plaintiff's papers may await his report thro' the Court.

13/1

A.S. Await report and in the meantime correct the order as per letter at p. 33

13/1

Mr B. Inde please await report

From

C.D.Gumaste, Esquire,
B.A.LL.B., Pleader,
Belgaum, (Bombay Province).

To

(1) The Collector of Belgaum District, Belgaum.

(2) The Secretary to Government of India (Central Govt)
Military Department.

Subject:- Notice of suit.
Under Sec.80 of the C.P.Code.

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Sir,

Under instructions from and on the information supplied by my clients (mentioned ~~as~~ below), I have the honour to give this notice to you, under Sec. 80 of the Civil Procedure Code, on their bhalf inrespect of a suit contemplated by them; I hereby give you the following information :-

Names and description the plaintiffs:-

(1) Chanabassappa Shivarayappa Padi Patil, age 38, Lingayat, Agriculturist, residing at Bagewadi in taluka Belgaum, of the District Belgaum in Bombay Province.

(2) Padigouda Shidramgouda Padi Patil age 32, rest -do-

(3) Basawanneppa Subrayappa Padi Patil, age 45, rest -do-

(4) Dewangouda Gurappagouda Padi Patil, age 30, rest -do-

(5) Basawantgouda Basangouda Padi Patil, age 45, rest -do-

(6) Shidlingappa Fadeppa Ghaniger, age 42, rest -do-

(7) Gurushiddappa Bhimappa Ghaniger, age 40, rest -do-

(8) Chambasawa w/o Basawanneppa Ghaniger, age 38, rest -do-

(9) Gangawwa w/o Rayappa Ghaniger, age 40, rest -do-

(10) Chanabas appa Chanabassappa Ghaniger, age 37, rest -do-

(11) Gurubasayya Chanabassayya Mathad alias Hiremath, age 42, rest -do-

(12) Rachayya Gurushiddayya Mathad alias Hiremath, age 37, rest -do-

(13) Fadeppa Rudrappa Barigidad, age 50, rest -do-

(14) Shingawwa w/o Basawanneppa Mangalgatti, age 35, rest -do-

Cause of action.-

1. A land at Bagewadi in Belgaum Taluka bearing revision S.No.119, measuring 18 acres and 10 gunthas and unassessed, formerly belonged to the ancestors or predecessors-in-title of the above persons, who then owned certain entire survey numbers from which pieces were carved out, forming a

a contiguous piece of land bearing the said R.S.No.119. Under an agreement entered into between the then owners and the Government and subsequently embodied in the orders of the Collector of Belgaum dated 1-3-22 1864 this piece of land was under a license from the then owners taken by Government for using it as Military Camping ground. It was stipulated that this land was not to be used or allowed to be used for cultivation and growing of crops, that the grass growing thereupon was to be utulised by the owners; that a portion of the assessment corresponding to the area taken for Military purposes as stated above, was to be deducted from the total assessment levied on the original lands from which this piece was carved out; and that this land was to be used only as a military camping ground by Government and was not to be let out to others for any purpose whatsoever. Accordingly, since then, this survey number 119 shown in the Revenue Records, a land reserved for Military Camping purposes, was being used only as a camping ground, the owners for the time bein taking the grass as settled in 1864. The ownership of the said S.No.119 had not passed to Government, who were mere licensees in respect of it, having been allowed to use it for the specified purpose stated above.

2. Recently however, Government abandoned the purpose for which the land was taken and unauthorisedly began to divert its use for other purposes. So, the above persons became entitled to revoke, and have so revoked, the license granted to Government in 1864. Government have violated the terms of the license and have let out this land for agricultural purposes to Mr.P.R.Chikodi, for a period of 99 years under the orders of the Collector of Belgaum in No.L.C.L.-638/39th March 1943. The above persons came to know of this unwarranted lease some time in July 1943.

3. Neither the Military Estates Officer, Poona Circle, nor the Collector of Belgaum, nor any other officer of the Central or Provincial Government has any right to commit a breach of the terms of the original license granted to Government and lease this land to others for cultivation or for other purposes. By this unauthorised act the proprietory rights of my clients, the plaintiffs in the contemplated suit - are seriously jeopardised.

Their immediate right to take the grass growing upon it has been seriously affected. The license being thus revoked the plaintiffs are entitled to possession and enjoyment of the land in any way they please, as full owners.

4. It is surprising that the original agreement of 1884 which must have been with Government, and the main terms of which have been noted in the Revenue Records of the village and other documents, were entirely ignored by the Collector of Belgaum and the Military Estate Officer, Poona Circle, when they both let out this land to Mr.P.R.Chikodi. Their orders and action in this respect are entirely illegal, unauthorised and hence void. By their action, the plaintiffs are entitled to claim immediate possession of the land. My clients have, therefore, resolved to file a suit against the Central and Provincial Government as a also Mr.P.R. Chikodi, the lessee and his tenants for the reliefs mentioned below

5. Reliefs claim.-

(1) Possession of the land S.No.119 of Bagewadi taluka Belgaum after declaring if necessary, that, the Collector's orders in No.L.C.L.-835, dated 29th March 1943, and the consequent lease to and subsequent encumbrance of a Taqavi loan by Mr.P.R.Chikodi of Belgaum are void and inoperative against the above persons.

(2) Costs of suit and past mesne profits of Rs.300/- for the last 3 years and future mesne profits also.

(3) Other necessary incidental and just reliefs.

6. You will, therefore, kindly note that my clients will file a suit against the Province of Bombay and the Governor General in Council amongst others in the Court of the Civil Judge, Senior Division, Belgaum, on the expiry of two months after the receipt of this notice by you, as prescribed in Sec.80 of the Code of Civil Procedure.

Hoping to be excused,

I have the honour to be,
Sir,
Your most obedient servant,
Sd. C.D.Gumaste,
Pleader.

Belgaum,
5th July 1946.

No.A.66/47.
Belgaum, 23-12-1947.

R.W.C.

2. Regular Suit, No.150/44 was originally filed by seven plaintiff That suit was permitted to be withdrawn with liberty to institute a fresh suit in respect of the same subject matter, on 7-3-1946.

3. The present suit No.267/44 of which the notice has now been given to the Collector, is in respect of the subject matter of suit No.150/44, The Defence of the said suit 150/44 was sanctioned by the Government of Bombay under the Government Resolution in the Legal Department No.5108 dated 13-7-1946.

4. The present suit being in respect of the subject matter in ~~xxxxx~~ suit No.150/44 and the cause of action for both these suits being the same, the present suit will have to be defended for the reasons on which the defence of suit No.150/44, was sanctioned. The action complained is justifiable and defensible.

5. You have invited remarks under Rule 118(c)(iii) of the ~~x~~ L.C.Rs. I believe no such remarks are necessary to be made in view of the fact that remarks must have been offered under the said Rules in respect of suit No.150/44.

6. All the papers in 6 files are returned herewith.

Sd.

23-12-1947. D.C.P.

Resubmitted.

The next date for filing W.S. is 12.3.48.

4/2

A.S. Pages 85 to 93 belong to Civil No. 267. I am afraid they will have to be detached from the file and tied with this batch

R.V.
4/2/48

Resubmitted.

I regret pages 85-93 escaped my notice. They have now been removed and properly attached.

5/2

A.S.

This relates to the defence of Belgaum Civil Suit No. 267 of 1947. The plaintiffs have asked for a decree for possession of the suit land, bearing Survey No.119 of the village of Bagewadi which was ordered by the Government to be leased to one P.R.Chikodi who is defendant No.2 in this suit. The plaintiffs allege that the suit land originally belonged to their ancestors and was taken by Government for the purposes of a military camping ground under an agreement executed in 1863 and subsequentely embodied in the orders of the Collector of Belgaum dated 1st March 1864. It is contended that under the terms of that agreement, the land was to be used only as a military camping ground and was not to be let out to others for any purposes whatsoever. As the land was leased by Government to defendant No.2 for agricultural purposes, the plaintiffs allege a breach of terms of the original agreement, or in the

alternative a breach of the terms of the original licence and demand possession of the land. Six of the present plaintiffs had at first filed Belgaum Civil Suit No.150 of 1944 on the same cause of action. The defence of that suit was sanctioned as per G.R.,L.D. No.5168 dated 13th July 1945 at Slip S in the file kept below. The plaintiffs subsequentely applied to the court for withdrawing that suit with liberty to file a fresh suit in respect of the same cause of action and that application was granted by the court by its order dated 7th March 1946 (p.95 of the file). The present suit is accordingly based on the same cause of action. As the facts and the defence are identical, the suit will be defensible on the lines of the brief accompanying the Government Resolution of 13th July 1945 ( P. 73 of the file). In addition, the District Government Pleader has suggested two additional technical pleas, (1) leave to withdraw suit No.150 of 1944 was granted to only six of the present plaintiffs. Some of the plaintiffs in the present suit being persons to whom no such leave was granted, the suit is not maintainable, (2) notice of the present suit given under section 80 of the Civil Procedure Code is invalid inasmuch as all the persons appearing as plaintiffs are not entitled to file the suit. I do not think there is much substance in any of the additional grounds. However, the Government Pleader may raise these pleas for whatever they are worth. He may be instructed to defend the suit on the lines of the brief accompanying G.R., L.D. No.5168 dated 13th July 1945.

R L A 5/2.

6.2.46

9 FEB 1946

REVENUE DEPARTMENT
SECRETARIAT, BOMBAY
6.2.46

× No. 1274 of 6 2/48

Civil Suit No. 267/1947.

In the Court of the Civil Judge, Sr.Dn.,
At Belgaum.

1. Chanbasappa Shivarayappa Fadi-Patil and others. | Plaintiffs.

Vs.

1. The Province of Bombay by the Collector of Belgaum and 2 others. | Defendants.

In this, the written statement of Defendant No.1 is as under :-

1. The plaintiffs' claim is denied in toto.

2. It is denied that suit survey number has been carved out in the manner set out in para 2 of the plaint. Plaintiffs must strictly prove the alleged carving out of the land, from ~~the lands~~ those mentioned in the said para.

3. It is denied that thr suit land ever belonged to the Plaintiffs or their predecessors in title. It is further -- denied that the suit land was taken by Government under a - licence from the then owners in or about the year 1864 and that under the terms of the said licence it was agreed that the land was not to be used for cultivation and growing of crops. The allegation made in para 3 of the plaint, regarding the terms of the alleged Licence are also denied. Plaintiffs must be put to strict proof thereof.

4. The land in question is the property of this Deft. No. 1 and the Collector has a right to dispose of the same (as he has been so done) under the Land Revenue Code, by leasing it out to Defendant No.2 on 10-4-1943. The Plaintiffs or their prede--cessors in title have no manner of right to the land and even if they had, the same is extinguished, the land being shown in Government Records, as Government property, at least since - 1888 and it has never been in enjoyment or occupation of the Plaintiffs or their predecessors in title since then.

5. The allegations made in para 4 of the plaint are -- baseless. Plaintiffs never became entitled revoke the licence there being in fact no such licence at all. There has been - further no violation of any of the terms of the alleged lic

P.T.O.

on the part of the Government. The allegation that the Plaintiff have been taking grass from the land in accordance with the con--dition of the Licence and that the ownership of the suit land was reserved under the terms of the said licence, in favour of Plaintiffs - grantors, are denied. The Plaintiffs have no right to demand back the possession of the land from Government, in as much as, the suit land was the aboslute property of Govt.. There has been no unwarranted or unauthorized act on the part of Govt. since Govt. have dealt with the property in suit as owners there--of and in a manner allowed byLaw (i.e. Land Revenue Code).

6. The licence if any must be deemed to have been revoked more than 12 years before the suit, since it is clear that it was not necessary either for the Plaintiffs' predecessors - - grantors or the Govt to keep the alleged licence in force all these years. Plaintiffs' suit for resumption on the ground of the breach of the condition of the Licence is clearly barred by Limitation.

7. The notice of the present suit given under Sec.80 C.P.C. is invalid and bad in law.

8. The suit is barred under Sec.11 of the Revenue Jurisdic--tion Act, since the Plaintiffs failed to prefer appeals against the order of the disposal of property by the Collector, as -- provided by Law, before filing the suit.

9. The plaint does not disclose any cause of action against Defendant No.1.

10. Plaintiffs are not entitled to any of the reliefs asked for, in para 11 of the plaint.

---

For these reasons, the suit be dismissed with costs. —

District Government Pleader,
Belgaum.

I, B. V. Jakati, Dist.Govt.Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 10 above, is true according to the information received and believed to be true. This verification is made at Belgaum, on the day of

District Government Pleader,
Belgaum.

55

No. J. 74 of 1950.
Belgaum, 7th February 1950.

1/1-95

From,

The District Government Pleader,

Belgaum.

To,

The Remembrancer of Legal Affairs,
Bombay.

L. D.
13 FEB 1950

Subject:- Civil Suit No. 267 of 1947 in the Court of the Civil Judge, S.Dn, Belgaum.

Sir,

2608
14.2.50

With reference to the above subject and in continuation of the letter from this office No.J. 58 of 50 dated 23rd January 1950, I have the honour to make the following report:-

1. The suit has been decreed wholly against Government who is Defendant No.1 in the case, and the plff is given a decree for possession of the suit property with future mense profits and costs.

2. The suit was one for possession on the ground that the lands originally belonged to plff's ancestors and that the year 1863-64 they were granted to Govt. under an agreement to be used as military camping ground. The Govt. however, committed a breach of terms of the agreement in leasing out the suit property to Deft 2 for agricultural purposes.

3. It is the case of the Government that the suit lands were never the subject matter of an agreement or license from plff as alleged in the plaint. The agreement or license not being admitted, the burden of proving the terms of the agreement or the license if any, lay upon the plaintiff; and as such the learned Judge erred in holding that the burden has been discharged by the plff. There is no evidence available in the Government records, and the plffs also have not produced any documents evidencing the said agreement.

4. The learned Judge therefore erred in holding that it w

not proved that the Government were the owners of the suit land especially in the absence of any - proff of title of the plffs regarding the lands. The suit lands have all along been mentioned in the Government revenue records, as lands set apart as Military camping grounds. The possession therefore of the suit lands through out the period from 1863, is that of the Government as owner as will be clear from the Government records in the case.. The learned Judge has taken the view that simply because the Government's name not mentioned as - occupant in the village record. The Government have failed to prove their title to and possession of, - the suit lands.

5. The learned Judge has also erred in holding "that plaintiffs' ancestors had given their portions of lands to the defendant No.1 for the purpose of - camping of the military troops, by way of license." It is not the case of the plffs that they themselves were in possession of the suit lands as owners, since after 1863. all that the plaintiffs say is that they have been cutting grass growing on the suit lands. There is no documentary evidence in support of this. The learned Judge therefore erred in basing his finding that plffs had proved the fact of cutting grass, relying on the bare word of the plffs. The vahiwat of the suit lands by the Government being proved by the record since 1863. The suit is clearly barred for possession.

6. It is also wrong to hold that there was a breach of the conditions of the license on the part of the Government by leasing the suit lands to deft 2 " for cultivation." The suit lands in dispute the Government being through out the recognised owner of the suit property had every right to put deft 2 in possession

of the suit lands as tenant.

7. The terms of the license or agreement not being proved the question of considering whether there was a breach of any of the condition does not arise at all.

8. Government possession of the suit lands must be taken to be either lawful or unlawful. If the former there is no cause of action since thereis no proof of the terms of the license by the plffs. If it is unlawful, the suit is clearly barred by time.

9. Taking any view of the case, it is my opinion that appeal be referred against the decision of the learned Civil Judge.

It may be noted that the appeal will have to be filed here in the court of the District Judge. The Judgement is dated 19-1-50. Certified copies were applied for on 24-1-50 and they were ready for delivery on 5-2-1950. The appeal therefore will have to be filed on or before the 28th February 1950.

No report could be made earlier since the original judgement was not available for perusal, nor, could a private copy thereof be obtained earlier.

The uncertified copy of decree & judgment have been attached here with the certified copy of the judgment & decree are sent to the collector

Yours faithfully,

Dist. Govt. Pleader, Belgaum.

Received on :- 2-7-1947.
Registered on:-7-7-1947.
Decided on :-
Duration:-

JUDGEMENT.

In the court of the CivilJudge, S, Dn . Belgaum..

Ex.97.

Reg. O.S. No. 267 of 1947.

Mr. B. N. Datar and C.D. Gumaste Pleaders.

1. Chanabasspapa Shivarayapa Padi-Patil age 30, Lingayata, Agriculturist, of Nitegagewadi.
2. Padigouda Shidramagaouda Padi-Patil age 32, Rest - Do- P
3. Basawanneppa Subryayappa Padi- Patil age 45 Rest - do- L
4. Damanagduda Gurappagouda Padi-Patil. age 30, rest do- A
5. Basawantgouda Basagouda Padi- Patil age 40, Rest - Do- I
6. Shidlingappa Padeppa Ranik Ghaniger age 43 rest - Do- deceased by heirs
6A. Madivappa Shidlingappa Ghniger. Caste Lingayat, age 35 of Bagewadi T
6B. Somawa Shidlingappa Ghaniger Caste Lingayata, age 35 of Bagewadi. I
7. Gurashidappa Bhimappa Ghaniger. age 40 Rest - Do- P
8, Chanabassawwa alais Chambawwa Ghaniger age 42, Rest - Do-
9. Gangawa Kayappa Gahiniger age 41, Rest - Do- P
10. Chanabassappa Chanabassappa Ghaniger age 37 Rest - Do- S
11. Gurabassayya Chanabassaya Mathad alais Hiremath, age 42 Rest -Do-
12. Rachaya Gurashiddaya Mathad alais Hiremath age 57 Rest - Do-
13. Padeppa Rudrappa Barigidad, age 35,

14. Shingawa Basawanneppa Mangalgatti, age 40 Hindu - Do-

Against.

1. The Province of Bombay, by its representative the Collector of Belgaum.
2. Pandit Rayappa Chikkodi, age 60, Lingayita journalist, Resident of Belgaum. | Defts.
3. Basawanneppa Shidaapa Kapari, age 42, Lingayita of Hare-Bagewadi. .....

Claim Rs. 300/- For Court fees and Jurisdiction.

The Plffs sue to recover possession of the suit land from the defts by declaring that the lease executed by deft No. 1 in favour of the deft No.2 was invalid as against the plff as it was done in violation of the terms of the aurgument of leasesee franted to deft.NO. 1 in 1863-64. In the alternative, they sue to recover the portions of the various plffs in the suit No. 119 after ascertaining their portions with the aid of the deft 1's except officer They also sue for their costs and future menne propfits .

The facts of the case may briefly be stated as follows:- The suit No. 119 origionally formed part of the lands of the ancestors of the plffs and the deft 1 carried out some peices fromk the lands of the plffs ancestors, formed a contiguous piece of land and gave a separate Rev. No. 153 to it in the year 1863-64. The said Rev. No. 153 correspondswith the present Rev. S.No.119. There was an aurgument between the deft 1 on one hand and the ancestors of the plffs on the other hand in 1863-64. that the said Rev. No. 153 was to be used by the deft 1 as a Military Camping ground only and not fir any other purpose and that the Plff's ancestors were entitled to utilise

the grass growing upon it. The deft 1 reduced the assessment of the plaintiff's lands proportionately as per agreement in view of the reduction in the areas of their lands. The deft 1 accordingly used it only for camping purposes and the plffs and their ancestors utilised the grass growing on their portions all along as ownership of the suit landx had not passe to the deft 1 and as the deft 1 were only the licensees to use it for the specific purpose stated above. But the deft No.1 abandoned the purpose for which the land was taken and leased it to thedeft 2 for cultivation in 1943 for 99 years,( i.e for the purpose other than the agreed one ). So, the plffs became entitled to revoke the license granted to the deft 1 . The deft 1 had no right to commit a breach of the terms of the license and lease the land to deft 2 or any one for cultivatio or any other purpose and the said lease is therefore invalid and not binding on the plaintiffs.

By this act of the deft 1, the plffs' right to take grass growing on the suit land is seriously affected. The plaintiffs are thus entitled to take possession of their land as the license was revoked on account of the unauthorised acts of the deft 1. A notice under section 80 C.P.C. was served on the deft 1 but the later did not heed to it. Hence, the suit. The deft 3 is the sub-lessee from the deft 2 and they are added as parties to the present suit for possession. The present plaintiffs are the representatives in interest of the origional owners of the inamship lands from which the portions were carved out and which a seperate number was given, hence, they have filed thepresent suit jointly. In the alternative, each set of plffs have claimed their origional portions out of the Suit S. Nos. separately as stated in para 6 of the plaint. The cause of action for the suit arose in July 1943 when plaintiffs came to know of the leasing of the suit land to the deft 2 by the deft 1's officer( the collector

The deft 1 in their Writtem statement, Ex. 16 denied the allegation that the suit S. No. was carved out of

of plff's lands and that those portions belongs to plff's ancestors. They further denied the alligation that tney were the licensees from plff's ancestors, f from the year 1864. They stated that they never agreed that the suit land would not be used for cultivation and that the plff's ancestors were entitled to take grass growing on the suit land. They alleged that the suit land belonged to them and that the plff lost all rights over it in 1888(if any). They challenged plff's right ot revoke the alleged license and stated that the deft 1 had not voilated any of the alleged terms of the alleged license. They denied plff's right to take grass from the suit land and stated theat they never agreed to give such a right to plff's ancestors They contended that the license, if any, must be deemed to have been revoked more than 12 years before the - suit and that plffs' suit for resumtion on the ground of the breach of the condition of the license were - barred by tiem. They contended that the suit was barred under section 80 of the C.P.C. was invalid and bad in law. They further contended that the suit was barred - under section 11 of the revenue Jurisdiction Act since the plffs failed to prefer the appeals against the order of the disposal of the suit land by the Collector, before filing the present suit. They prayed their costs.

The deft 2 in his Written State ment at Ex. 19 supported the Written Statement of the Deft 1 in toto. He further stated that the leasing of the suit land by the deft 1 to the former was not invalid. He stated futher that he spent large sum of the money over the suit land and that the plffs were liable for the same. He contended that the suit was bad for multi-fariousness or for misjoinder of the parties. He prayed for his costs.

The deft 3 remained absent and the suit proceeded exparte against him.

The following issues were framed by Mr. B.K.Khade at - ex.24.

I S S U E S.

(1) Do plaintiffs prove that the suit land was carved out of the lands belonging to their predecessors?

(2) Do plffs prove the grant of the licence of the suit land as alleged in the plaint?.

(3) Is not the suit in time?

(4) Is the suit barred by section 11 of the Revenue Jurisdiction Act?

(5) Is the notice given to deft 1 under section 80 of the C?P.C bad in law?

(6) Is the suit bad for misjoinder of parties and causes of action?

(7) Are plaintiffs entitled to the possession of the land?

(8) What decree?

My findings.

On issue No.1:- Yes.

" 2:- Yes.

" 3:- It is in time.

" 4:- No ( It is also not barred under ~~xxxxxxxx~~ Article 11 of the Indian Limitation Act as argued by Defendant 2's pleader).

" 5:- No.

" 6:- No.

" 7:- Yes.

" 8:- As per finalorder.

Reasons.

Issues Nos. 4 to 6:- Before dealing with the merits of the case, I would like to dispense with these issues, which cover the law points. The defts 1 and 2 in their Written Statement contended that the notice, goven by the plffs to the deft 1 was not proper and valid in law. But their learned pleaders

did not point out any irregularities in the notices, given by the plffs to the deft 1, as required under s section 80 of the C.P.C. Some of the plffs had served the notices under section 80, Ex. 96 before filing the suit in 1943. But the said suit No. 150 of 1944 it is stated, was withdrawn with the permission to file a fresh one, on the same cause of action. Later, the plffs gave the notice to the deft 1 under section 80.C.P.C. before filing the present suit and filed it actually after the expiry of 2 months' period. The learned pleaders for the dfts 1 and 2 could not challenge these facts at the time of the argument and could not point out any fact to treat the present suit as barred under section 80 of the Civil Procedure Code. I, accordingly, without discussing the point in detail record my findings on issue No. 5 in the negative.

The learned pleaders for the defts 1 and 2 argued that the present suit was barred under section 11 of the Revenue Jurisdiction Act and section 14 of the Indian Limitation Act. The section 11 of the Revenue Jurisdiction Act would not apply in the case whether the Collector passes some order as a Revenue authority. In the present case, the order, passed by the Collector at Ex.33 in 1943 is done by him as the representive of the Government (the Deft 1). So, the said action 11 of the said act cannot be made applicable to the present case. The plffs can prove thier right over the suit property against the deft 1 , treating them as any other individuals. As far the Article 14 of the Indian Limitation Act, it can be said that the order was passed by the Collector at Ex.33. behind the back of the plffs and none of the plffs was party to the proceedings, held by the deft 1 while leasing the suit land to the deft 2 in 1943. The deft 1 began to treat the suit land as their own in 1943,

openly and the plintiffs were bound to file the suit within 12 years from the date of that order, ex.33. The proper - Article 142 or Article 144 of the Indian Limitation Act and not Article 14 of the said Act as contended by the learned pleader fro deft 2. I, therefore, hold that the defts have - failed to prove that the suit was barred either under section 11 of the Revenue Jurisdiction Act or under Article 14 of the Indian Limitation Act.

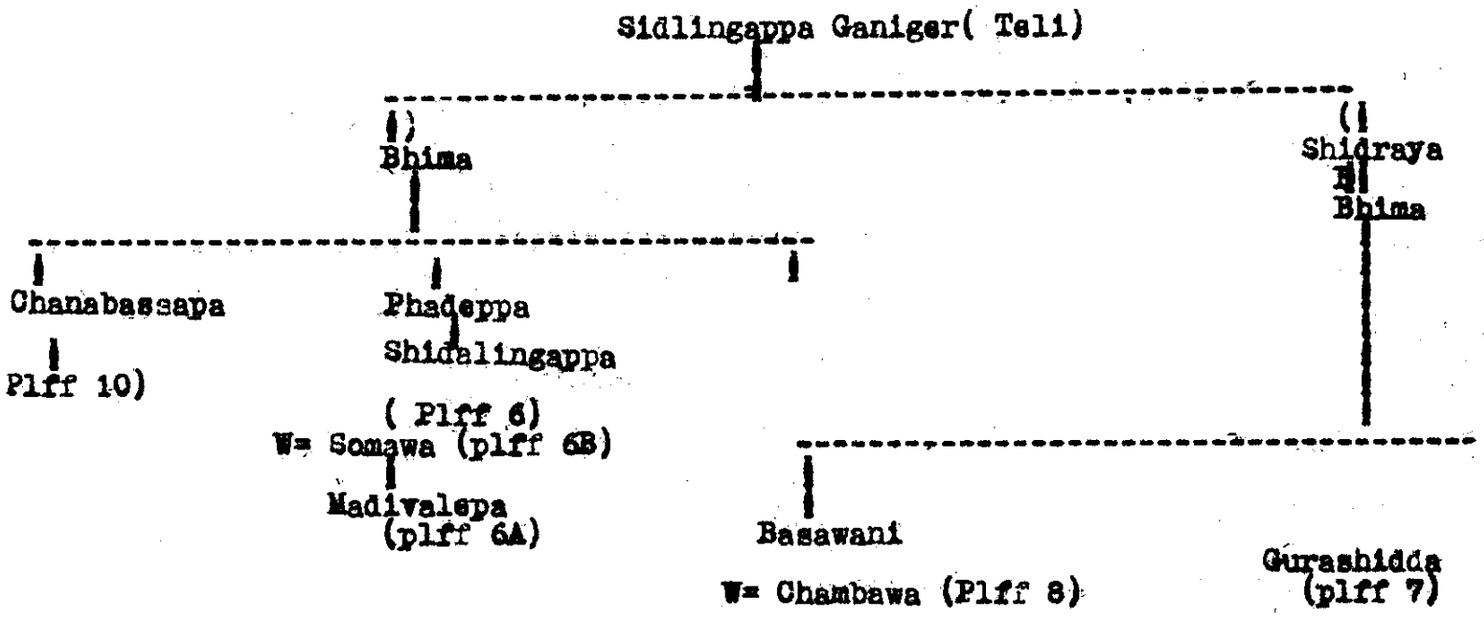
The learned pleaders for the defts 1 and 2 argued that there were 4 sets of plaintiffs in the suit, having ant indpeendent right over an alleged independent portion in the suit S.No. 119 and that the present suit, therefore, was bad for misjoinder of parties. Rule 1 of order 1 C.P.C. reads thu

All persons may be joined in one suit as plffs in whom any right to relief in respect of arising out of the same act or transaction or series of acts or transanctions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought seperate suits, any common question of law or fact would arise." In view of the provisions of this rule and the prayers, made by the plffs in the plaint, it can be said that the plffs were justified in filing one suit joinl ly againat the deft 1 and their agents. I may also quote an authority of Md. Khalal vs. Mohabbob A.I.R.1942 Allahabad 122 in support of my view. Thus, the present suit is not bad for misjoinder of the plffs. It was also not pointed out by the learned pleaders for the defts as to how the suit was not maintanable for the multifariousness. Without discussing the point in detail any further, I record my findings on issue No. 6 in the negative.

Issues Nos. 1-3 and 7:- There are four sets o' plffs in the suit and every one of these sets claims a port of land from the suit land, which is the combination of four portions of 4 sets of the plffs. At the time of hearing, the defts admitted that the suit S.No.119 was formerly known as Rev. No. 153 and that it was formed in 1863-64 by carving o some portions from 4 Revenue numbers 60,70,73 and 74, belon to the alleged ancestors of the plffs, for the purpose of

of using it for camping the troops. The plffs allege that their ancestors gave the portions of their lands to the deft 1 as a licence only for the said specific purpose and that the Govt. had agreed to allow the - plff's ancestors( owners of those portions) to remove the grass from the suit land. The deft denied the alleged agreement and stated that the suit survey No. 119 belonged to the deft 1, that they( the Govt) had become the owners of it by adverse possession for having enjoyed it for more than 12 years next before suit that the plffs had no right to claim the possession of it from the deft 1. Exs.36-38, 41 and 42 will go to prove that some portions from the said 4 Revenue numbers were carved out and that the said portions were conso--idated into one Revenue number, 153 in 1863.

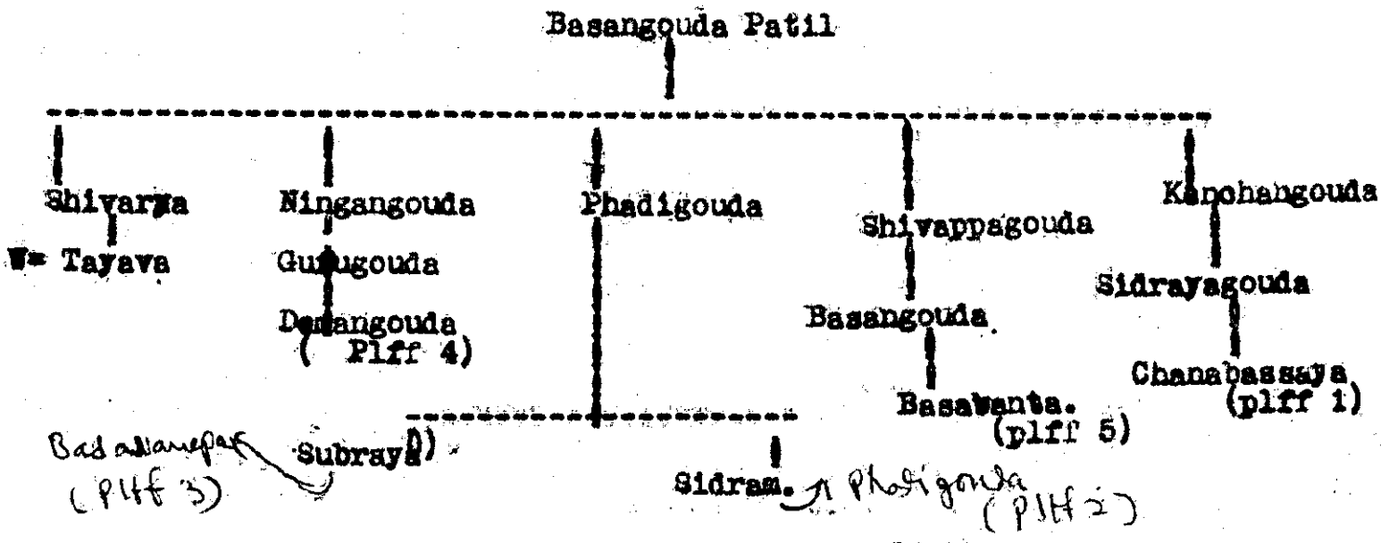
I shall have to see in the first instance if the plffs are the heirs of the owners of the portions S.No. 119. As these 4 sets of plffs are not related to one another among themselves I shall have to deal with every one - of these sets seperately. Ex. 69 is the old assessemnt receipt book of 1863-64, concerning the Rev. No. 70, corresponding to the pres ent R.S.Nos.120 and 117 and portion included in the suit land. Bhima Shivalingappa was the origional owner of the said Rev. No.70, before the portion of 8 Acres and odd was carved out from the said land as per Ex.69 Ex.58 shows the extent of the land taken from every one of those 4 lands. Ex.39 is the extract of the pacca - book of the year. 1884 and it shows that Bhima was the Kardedar or holder or the owner of the S.NOs.120 and 117, then. A" the column of Khadedar is blank in the said lands. The plffs 6-10 form one set of plffs and they examined the plff 7 at Ex.72 to prove their - genealogy. It runs thus:-




Bhima Shidlinga was the owner of the Rev. No. 70 in 1863-64 and also in 1884 as per exs. 69 and 39. The said Rev. No. 70 origioannly measured 19 ACtes 39 Gunthas and it assessed at Rs. 34/-. Some 8 Acres 21 Gunthas were carve out from the said R.No. 70 in 1863 and Bhima retained - possession of the remaining portion or 11 Acres 18 gunthas in the said land. It can be seen from Ex. 69 that the Govt. reduced the origional assessemnt amount of Rs. 34/- of it b Rs. 11/- only though Bhima was entitled to the reduction of Rs. 1 5/- proportionately. It can be said at this stage tha the Govt. did not reduce the assessment of Rev. No.70,in exact proportion, after carving out a portion of about 8¼ acres from its area of about 20 acres, in consideration of some other rights reserved to the origional owners of the lands, over the suit land. If the deft 1 had produced the whole corresppndence including the final order passed in - connection with the carving out of theportions from 4-5 lan of others to form a new number, the whole matter would have been clear and there wasno necessityfor the court to draw the inferences or presumptions from the somrounding circum ances and the secodary evidence, led by theplffs. The next documents, which connect theplffs to the S. Nos. 120 are exs. 86-88 and they show that plff 8's husband, Basawannep the plff 6, the plff7, thepliff 8 and plff 9 's husband, Rayappa are the owners of the R.S. No. 120. It was admitte by the learned pleader for the plffs that the other portio

of the Rev. No. 70 (i.e. R.S.No. 117) was lost to the family of plaintiffs 6-10 some time back. The Kulkarni of the village ( Deft's 1 servant) admitted at Ex. 81 that the plffs 6-10 were holdong the prvsent possession of the R.S. No. 120; and the defts 1 and 2 do not challenge this fact. There is no reason why the genealogy, given by the plff 7 should be disbelieved. The Defts 1 and 2 did not point out any fact or circumstances to create some doubt in my mind about the correctness of the genealogy, but on the other hand, the plff 7's version was corroborated by the Government record itself. I believe the plff 7, rely on exs.69,39,81 86-88 and hold that the plffs 6-10 have proved that a portion of about 8¼ acres of land was taken out by the Government, from the Rev. No. 70 in the year 1863, to form the suit R.S.NO.119 and that the said portion belonged to their ancestor, Bhima.

Similary, the plffs 1- 5 form another set of plffs and they are thepresent owners or Kabjedars of the R. S.No. 116. The sai land was formerly known as Rev. 69. Only 38 gunthas were carved out from the this land and the said po rtion wa included in the suit land in 1863, as per exs. 36 and 37. These plffs have not produced any assessement receipt book of theyear 1863 like Ex.69 of plaintiff 6-10. However, Ex. 39, the extract of Revenue Pacca book of 1884 and ex.40 throw some light on the point. The plff 1 swears at Ex. 76 and gives the relevant genealogy of the plffs of the plffs 1-5 as under:-



Tayava Shivaray's name appears in the pacca Book, Ex. 39 as the owner of the R.S.No. 116 during the year,1884. The next extract of Record of Rights, Ex. 83 and the statement of the Kulakrni, Ex.81 show that the plffs are the present owhers of the said land. The defendants could not challaenge the correctness of this genealogy also. I believe the plff 1 and hold that the Rev. No. 74 belonged to the anestors of the plffs 1-5, that 38 gunthas out of it were carved out in 186 and included in the suit S. No. 119 ( or Rev. No. 153) and that the plffs 1-5 are the heirs of the origional owner of the Rev. No. 74.

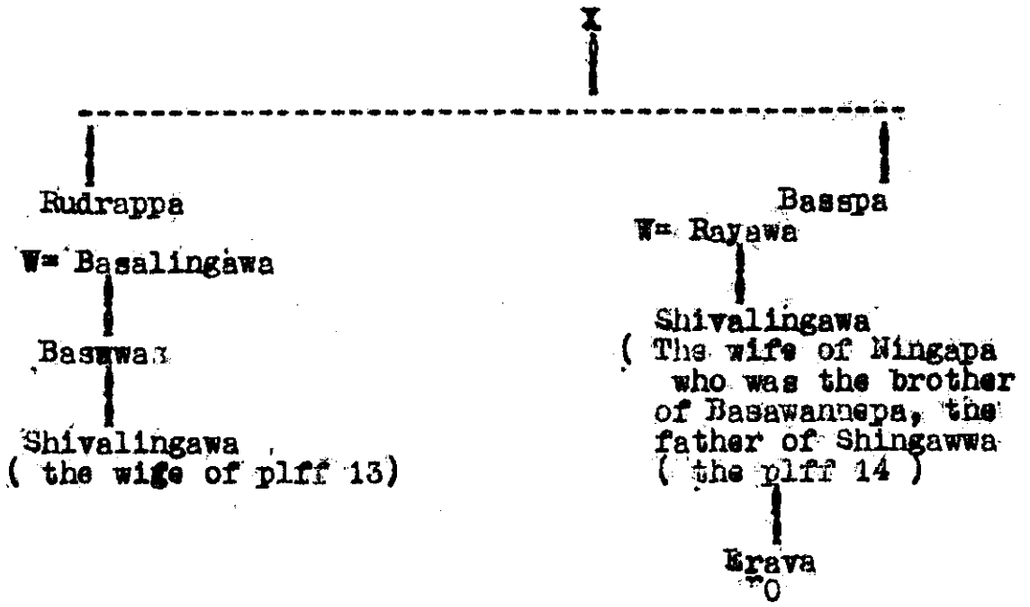
The plffs 11 and 12 form the third set and they a the present Kabajedars of the R. S. Nos. 125 and 118. These R.S. Nos. corresonded to the old Rev. Nos. 73 and 155. It is clear from Exs.36-38 that a portion of 8 acres 36 gunthas was also carved out ~~kunk~~ of the Rev. No. 73 in 1863 to form the suit land. Ex. 39 shows that plff 11's father was the kar edar or the owner of the Rev. Nos. 125 and 118 in the year 1884. I may state here the genealogy of the plffs 11 and 12 as given by the plff 11 at Ex.71. It runs thus:-

Chanaviraya Mathad.

| | |
|---|---|
| Gurabassaya | Gurashiddaya |
| Chanabassaya (plff 11) | Rachaya (Plff 12) |

Exs. 88,81, 70 and 85 will show that the plffs 11 and 12 are holding possession of the said lands, R.S. No. 125 and 118 as owners at present. The defendants could not challange these facts by leading any evidence or pointing out any circumstances. I thus, belive the plff 11 and hold that the plffs 11 and 12 are the only heirs of the origonal owenr o the Rev. No. 73 and that a portion of 8 acres 36 gunthas o land out of it, was carved out and included in the suit la in 1863.

The last set is off plaintiffs 13 and 14 and they do not belong to the Bakhedi family which owned the origional Rev. No. 74. But these plaintiffs have ~~in~~-inherited the portions of this Rev. No. 74 from the female heirs who belonged to the Bhakhedi family. The plff 13 gave the genealogy of the Bakhedi family at Ex.77 and pointed out as to how the plffs 13 and 14 inherited the lands in question.




It is not denied that the old Rev. No. 74 was split up into 2 portions and that it was - afterwards numbered as R.S. Nos. 126 and the portion of it was included in R.S.No. 119. Exs. 36-39 are clear on the point. The plff 13 states that he is the heir - of the last owner of Bakhedi family, shivalingawa in the capacity of her husband and that the plff 14 is the heir of Ningappa, the husband of Shivaningava, after the deaths of Shivalingawa, Irava, Ningappa and Baswantappa mentioned in the above genealogy. The plffs 13 and 14 are holding poszession of the said S.No. 126 at present as the heirs of Bakhedi family and no nearer heir has so far challanged their title to the said land. Ex.39 shows that Baslingawa was Kardedar of the R.S.No. 126 in the year, 1884. Ex. 81 shows that the S. No. 126/1 is in the possession of the plff 14. The plff 13 states that he is in the possession of R. S. No. 126/2. The defts

not able to contradict the statement of the plff 13. I, therefore, believe the plff 13 and hold that the Rev. No. 74 originally belonged to the Bakhedi family and the plffs are the heirs of the owners of the said Rev. No. 74 at present. I also hold that a portion of about 3 Acres 21 Gunthas was carved out of the Rev. No. 74 and included in the suit land - in 1863-64.

The plffs have thus, been able to prove the title to the various portions of the suit S.No. of their ancestors, during theyear, 1863 and they also pointed out that there is no other heir to those - ancestors except themselves. They also proved that the suit S.No. was formed in 1863-64 by carving out the various portions from revenue numbers, belonging to their ancestors. The question would then arise as to whether those owners gave those portions to the Govt. permanently or retained their proprietory right over them. The plaintiffs allege that the said portions had been given to the Government to use them only for a specific purpose by way of a license and that their ancestors had retained the right of taking grass, growing on the suit land in themselves. They rely on Ex. 69 in support of their allegations. The deft 1 did not produce any document of the period of 1863-64 to show that thesuit portions ( i.e. the Suit S. No. 119) were taken by them ( The Govt.) from the original owners in 1863 permanently by adopting some procedure. There is neither a sale deed nor a permanant lease deed on record. The defendants did not even lead evidence - to show that the said portions were acquired under the Land Acquisition Act, for the purpose of camping of the military in 1863. The --- ---

Plaintiffs took steps at Exs. 43, 45, 48, 49, 59 and 65 to have the Defendant 1's old record of that period, before the court but the Defendant 1 did not produce any paper before me on the ground that the old record was not traceable in their offices. Ex. 69 is the summary of the original order that was passed at the time of carving out of those portions in 1863-64 and it is written by one of Defendant 1's servants. In the absence of the original record, Ex. 69 can be relied on as a secondary evidence. It is true that the exact terms of the agreement, entered into between the Government and the original owners cannot be ascertained from Ex.69 ; but one can infer from it that there were some conditions, -- attached to the grant of those portions to the Government then.

The Collector ordered in 1863 for the reduction of some amount in the assessment of those 4 lands after -- carving out the portions and it was not therefore possibl for him to take such steps unless there was some order of the Government to that effect, on record, then. Ex.69 refers to the right of the owners of the lands to utilize the grass, growing on the suit land; but the learned pleaders for the Defendants argued that the said entry referred to the permission, given by the Collector to the owners to remove the grass that was standing on the suit land at the time of passing of the order. The learned pleaders for the parties interpreted the words

" to suit their own purpose. The original order of the Collector, as stated above, is not before me, so, I am required to give the interpretation t the words, used by the translator (Kulkarni) of Collector's order. The proper way of interpreting the meaning of -- those words would be to look to the circumstances of the case and opine about their possible meaning. The process of carving out and measuring of the suit land and other 4 lands was going on in 1863-64 and the work had been

probably completed at the time of making an entry at Ex.69. The suit land was required only for the purpose of camping of the troops, in case of necessity and not for the -- regular or daily use. There is nothing on record to show that it was needed immediately(during that year). If the owners of the lands were not allowed to take the grass -- growing on the suit land permanently, there was no -- necessity for the Collector to make a specific reference to the grass in his order, which dealt with the reduction of assessment of all those 4 lands. The owners of the lands would have removed the grass from the suit land before -- giving the portions to the Defendat 1 if there was a standing grass on them, then and there was no necessity for the Collector to grant the permission to them to remove the - grass that was standing on the suit land at that time. Thus, it can be said that the words, used at Ex.69, in respect of grass, refer to the permanent right of the owners of the - portions to utilize the grass growing over the suit land.

The Plaintiff and their witnesses led evidence to prove that they alone grazed their cattle over the suit land and removed grass from it all along. While the learned pleaders for the Defendants 1 and 2 suggested that all the villagers too, used the suit land as a pasture. But I attach no importance to this fact as it is likely that the Plaintiffs being the owners of the neighbouring lands grazed their cattle - over it. But I am now concerned only to see, if the -- Plaintiffs have got the right to prevent others or the - Defendants from making use of the grass growing on the suit land. It is immaterial to investigate the question, whether the Plaintiffs put the enclosures around the suit land or not. It is equally immaterial to see whether the Plaintiffs allowed the strangers to graze their cattle on it or not, as long as the strangers do not exercise their right over it. The Defendants also never prevented the Plaintiffs or any one from using the grass, grown over the suit land till 1943. I can, therefore, believe the Plaintiffs and their -

witnesses, Exs. 78 and 79 and hold that the Plaintiffs have proved that they and their ancestors made use of grass, -- grown on the suit land all along from 1863 to 1943. The learned pleaders for the Defendants 1 and 2 referred to -- Ex.29 and stated that the Defendant 1 used the Babool tree, standing on the suit land as their own and that the Plaint-iff did not lay claim to it. They further argued that the said fact should be taken as the proof of Defendant 1's -- title to the suit land. But the said event alone cannot prove the title of the Defendant 1 to the suit land. The ancestors of the Plaintiffs had given the portions of their lands to the Defendant 1 for using it for the camping purpose and it was, therefore, necessary for the Defendant 1 to keep the suit land clean from the growth of trees and bushes for the said use. If the Defendant 1 were to remove the trees, bushes etc. from it, the ancestors of the Plaintiff or the Plaintiffs could not have prevented the Defendant 1 from -- taking such actions. Moreover, it can be seen from Ex.69 that no right of removing the trees growing over the suit land had been conferred on or reserved to the owners of the lands. Thus, the Defendant 1 cannot derive any advantage out of Ex.29 and say that the said fact proved their title to the suit land. The Government record (Exs.26-31) does not also clearly indicate that the Defendant 1 were the -- owners of the suit land. In the column of occupant's name in the revenue record, Government's name does not appear as owners but it is written thereunder only the purpose for -- which the suit land was meant and kept fallow. As long as the Defendant 1 kept it fallow or vacant, the Plaintiffs had no right to ask the Defendant 1 to vacate it and deliver -- possession of it to them for the non-use of it by the troops for a long time.

It was further argued by the learned pleaders for the Defendants 1 and 2 that the Plaintiffs were not entitled to prevent the Defendant 1 from using the suit land for some useful purpose when the said land had been given to the

Defendant 1 by the ancestors of the Plaintiffs for camping purpose and when that purpose was abandoned or found unnecessary or impracticable. I agree with the learned pleaders in this respect if such use does not affect the rights of the Plaintiffs or some one else. The Plaintiffs were -- allowed to make use of grass, growing over the suit land at the time of the grant itself. Ex.69. If the Defendant 1 lease the suit land to the Defendants 2 and 3 for -- cultivation, the latter would naturally bring it under cultivation by removing grass etc. and the Plaintiffs will have no opportunity to go over the suit land and take grass from it. They are, thus, deprived of their right to -- utilize grass growing over it. Defendant 1's own document, Ex.26 also indicates that the Collector did not permit the leasing of the suit land for cultivation to others (one Deshpande) during the year 1910, on the ground that it had been reserved only for the use of the troops and as such it could not be used for the purpose of cultivation. It is not known how the then Collector passed such an order in 1910 and how the suit land was leased to the Deft.2 during the year 1943, Ex.32. It is also not known if the order, passed in 1863-64 was available to the Collector in 1910 while passing the order, Ex.26. In view of Exs. 69 and 26 and the circumstances of the case, it can be said that the suit land was to be kept vacant for the purpose of camping of the troops only and that the Defendant 1 had no right to utilize it for cultivation so as to deprive the Plaintiffs of their right to use grass, growing on the suit land.

It was argued by Defendants' learned pleaders that the Plaintiffs' right of taking grass records(i.e.the - Record of Rights of any year) and that the Plaintiffs and their ancestors would not have kept quiet all along without getting that fact entered in the Revenue records if they had such a right over the grass growing on the suit land. But the learned pleaders were not able to explain why -

such a right was noted in Plaintiffs' assessment receipt book, Ex.69. It is to be noted that the Government themselves have not asserted in their own records that the suit land belonged to them in clear and unambiguous words. On the contrary, only the purpose for which the suit land was reserved is described in the Revenue records all along. The Plaintiffs do not challenge Defendant 1's right to use the suit land for the purpose of camping the troops subject to their right of taking grass from it. The Defendant 1 have no document to prove their absolute title to the suit property from the year 1863 but the Plaintiffs have produced Ex.69 and they rely on Defendant 1's document,Ex.26 in support of their allegations. In view of all these - facts and circumstances of the case,I hold that Plaintiffs' ancestors had given their portions of lands to the Defendant 1 for the purpose of camping of the Military troops, by way of a licence permanently reserving their right to take grass growing on the suit land.

It is to be seen now as to whether the Plaintiffs are entitled to recover possession of their respective portions out of the suit land from the Defendants, on the ground - that the Defendant 1 committed the breach of condition of the licence. The learned pleader for the Defendants, in the first place, did not admit that the said portions were given to the Defendant 1 as a licence. They further - argued that the licence was revoked or extinguished on the deaths of the grantees of it as it was of a personal - character and that the Defendant 1 became the owners of the suit land by adverse possession for having enjoyed it for more than 20-25 years from the dates of the deaths of the grantors of the licence. I have already stated above that the grant of the portions of the lands was a licence and need not repeat the reasons forholding it as a licence. The Defendants cannot dispute the principles of law that the adverse possession in the case of a licence starts only from the date of the termination of the said lic[illegible]

and that it cannot terminate on the date of the death of the grantor of it if it is not of a personal character. In the present case the licence was not of a personal character but it had been granted to the Defendant 1 for the specific purpose already referred to above. The Defendant 1 was to hold possession of it permanently for camping purpose without infringing Plaintiffs' right the take grass growing over it. As there was no agreement with the Defendant 1 that they should use the suit land regularly or periodically, the Plaintiffs could not force the Defendant 1 to use the suit land for camping purpose within a particular period, regularly. The Defendant 1 did not inform the Plaintiffs that the former had abandoned the purpose for which the licence was granted. The Plaintiffs came to know of Defendant 1's intention to abandon the said purpose when they leased the suit land to Defendant 2 for cultivation in 1943, Ex.32. The Defendant 1 had asserted in 1910 that they had not abandoned the purpose and the Plaintiffs were all along till 1943 were under the impression that the Defendant 1 would use the suit land for camping the troops in cases of necessity. So, it can be said that the licence was extinguished in 1943 when the purpose was abandoned and that the adverse possession of the Defendant 1 started from the year.

The learned pleaders for the Defendants next argued that as the purpose of camping the troops on the suit land was found unnecessary and impracticable, the Defendant 1 was entitled to use it for any other useful purpose. They also suggested that the suit land was not used for the Military camping for more than 20-25 years and that the Plaintiffs did not raise any objection to the abandonment of the said purpose. It is true that the Defendant 1 did not use the suit land for the purpose of camping the troops for more than 25 years but at the same time, they did not interfere with the right of the Plaintiffs to take grass growing on the land, at any time from 1863 to 1943.

It is not the case of the Defendants that Plaintiffs' ancestors had contracted with the Defendant 1 that the licence would be deemed to have been terminated or extinguished if there was a non-user of the land for the camping purpose for a particular period. The learned pleaders for the Defendants tried to take advantage of t provisions of Section 62 (F)(4), Sections 52 and 60 of Indian Easement Act but those provisions cannot be made applicable to the facts of the present case. They relie on Korelal Vs. Badriprasad, 68 I.C. 107 to show that the licence was extinguished after the death of the grantors the licence but the said ruling too cannot apply to the facts of the present case as the licence in suit was not a personal character.. It was in force until the purpose was abandoned by the Defendant 1 to the knowledge of the Plaintiffs i.e. until 1943.

The Defendant 1 broke the condition of the licence 1943 by leasing the suit land to Defendant 2 for cultiva and the Plaintiffs are, therefore, entitled to recover possession of it. The suit is filed in 1947 i.e. within 12 years from 1943 and thus it is not barred by time. I the Defendant 1 had not leased the suit land for cultivation, the Plaintiffs would not have been entitled to file the suit for the recovery of possession of it as their right to take grass growing on it would not have been infringed. The Plaintiffs have shown that they are the only heirs of the original grantors of the suit land to the Defendant 1 and that the Defendant 1 has committed th breach of condition of the licence. The Defendants did not prove that the Defendant 1 had become the owner of th suit land by adverse possession for more than 12 years ne before suit. The result is that the Plaintiffs succeed in their suit. I accordingly record my finding on all these issues in favour of the Plaintiffs but against the Defts and pass the following order.

ORDER.

The Plaintiffs do recover possession of the suit land

from the Defendants. The Defendants do pay the costs of - the suit to the Plaintiffs together with the future mesne - profits from the date of the suit till the delivery of - possession of it to them. The Defendants do bear their own - costs.

19-1-1950.

Sd/- M.H.Kazi,
Jt. Civil Judge, Senior Division,

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# D E C R E E .

In the Court of the Civil Judge, Senior Division,
Belgaum.
Regular Civil Suit No. 267 of 1947.

1. Chanabasapa Shivarayapa Patilpatil,
age 30 Lingayita Agriculturist,
Resident of Bagewadi in taluka Baelaguam
and thirteen others. ... ... Plffs.

against.

1. The Province of Bombay by its representative
the Collector of Belgaum.
2. Pandit Rayappa Chikkodi, age 49, Lingayit,
Journalist resident of Belgaum.
3. Basawantappa Shiddapa Kapari. age 42,
Lingayit, residing at Hirebagewadi in
taluka Belgaum. ... ... ... Defts.

Received on ..... 2-2-47.
Registered on .. ..2-7-47.
Value of court fee and Jurisdiction. } Rs. 300/

In this, the plffs above named beg to state as follows:-

1. Description of the property in suit:-

Land situated at Bagewadi in taluka Belgaum.

| R.S.NO. | Acre -Gunthas | Asstt. | Value |
|---|---|---|---|
| 119 | 18 - 10 | nil | Rs. 300. |

2. The above land formerly belonged to the ancestor or the predecessors-in-title of the plffs mentioned above, who then owned entire Revenue Survey Numbers from which peices wer carved out, forming a contiguous piece of land which was numbe seperately as Revenue S.N. 153, which corresponds with the present Revision S.N. 119 in suit. The chart produced with the plaint shows the former entire survey numbers and the suit su No. carved out them. The following table shows the areas carv

out from the several survey numbers:-

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| | | A-G | A & G | | |
| 69 | 21-14 | 0-38 | 20-16 | 69 | 116 |
| 70 | 19-39 | 8-21 | 11-18 | 70-154 | 120-117 |
| 73 | 19-38 | 8-36 | 11-2 | 83-155 | 125-118 |
| 74 | 16-35 | 3-11 | 13-24 | 74 | 126 |
| 76 | 4-34 | 0-35 | 4-29 | 76 | 127 |

3. Under an agrreemnt entered into between the then owners and the Government, and subsequentely embodied in the orders of the Collector of Belgaum dated 1-3-1864, the suit land was, under a license from the then owners, taken by govt. for using it as a Military Camping ground. It was stipulated that the suit land was not be used or allowed to be used for cultivation and growing the crops; that the grass growing thereupon was to be utilised by the then owners; that a portion of the assessment corresponding to the area taekn for a Mx Military purposes as stated above was to be deducted from the total assessemnt levied on the origional entire lands from which the suit land was carved out; and that the suit land was to be used only as a Miliatary camping ground by Government and was not be let out to the others fro any purposes whatsoever. Accordingly since then, the suit land has been shown in the Revenue - Records as land reserved for Miliatary camping ~~grassmt~~ purposes; and was being used only as a camping ground, the owners for thetime being takingthe grass as settled in 1864. Thdownership of the suit land had not passed to Government, who were mere licensees in respect of it. having been allowed to usse it, for the specified purpose stated above.

4. Recently however, Government abandoned the purpose for which the ~~xkmd~~ land was taen and unauth-orisedly began to divert the use for other purposes. So the plffs became entitled to revoke and have so revoked

the license granted to Government in 1864. Government have voilated the terms of the license and have let out the suit land for agricultural purposes to deft No. 2 for a period of 99 years under the orders of the collector of Belgaum, in No. L.C.L 638, of 29th March 1943. Plffs came to know of this unwarranted lease, a considerable time thereafter. Neither the Collector of Belgaum nor any Officer of Government had any right to commit a breach of the terms of the origional license granted to Government and lease the suit land to - others for cultivation or other purposes. The orders and - actions of the Collector of Belgaum in letting out, on the recomendation of the Military Estates Officer, Poona Circle the suit land to deft No.2 ignoring the terms of the origion agreement were wholly illegal, unauthorised and void. By - this unauthorised act the proprietary rights of the plffs are seriously jeopardised. Their right to take the grass growing upon the suit land is seriously affected thereby. Th license being thus revoked the plffs are entitled to claim possession and enjoyment of the land in any way please as full-owners. The plffs have served the deft No.1 with the requisite notice under section 80. C.P.C. and this suit has been filed after the expiry of two months of the service of the said notice.

5. The deft No. 2 is a lease from the deft No.1 an deft No. 3 is a sub-tenant of deft No. 2. The Tagavi loan inourred by deft No. 2 is not binding on the plffs. The def Nos. 2 and 3 are impleaded as they are liable to hand over possession of the suit land to plffs with manse profits.

6. The present plffs are the represen tavés in int est of the owners of the survey numbers out of which the suit land was formed; hence they have filed this suit join for possession of the whole of the land in suit. However, it turns out that the present plffs are not entitled to possession of the entire suit land, then the plffs claim alternatively as below:-

i). Plffs Nos. 1 to 5 are entitled to possession of portion marked C H I in map no.1 in the Chart, which is equal in area to the total area of - Revenue S.No. 69 minus the area of Re.S.No.116.

ii). Plffs Nos. 6 to 10 are entitled to possession of the portion marked F G I D in the said map, which is equal to the total area of old Revenue S.NO.70 minus the area of R.S.Nos. 120 plus 117.

iii). Plffs Nos. 11 and 12 are entitled to possession of the portion marked E F G D in the said map, which is equal to the total area of old Revenue S.No. 73 minus the area of R.S.Nos. 125 plus 118.

iv'). Plffs Nos. 13 -14 are entitled to possession of the portion marked A D E in the said map which is equal to the total area of old Revenue S.No. 74 minus the area of R.S.No. 126.

These portions can be ascertained and measured by appointing an expert officer in the survey departments by referring to the appropriate records regarding the said Revenue and Revision Survey Numbers.

The Chart produsd with this plaint is to be treated as part of the plaint.

7. The cause of action for this suit arose some time in July 1943 when plffs came to know about the un - warranted by the Collector of Belgaum.

8. The land in the suit is situate whithin the local jurisdiction of this court and the province of Bombay is a party to this suit, it is to be heard as a special Jurisdiction suit.

9. Notice of this suit under section 80 of the C.P.C. was served on the collector of Belgaum on - 8-7-46 and this suit has been filed two months after - receipt thereof.

10. The value of the suit for court fee is as follows:-

The land is not assessed to the payment of land Revenue . It is a follow land and is worth of Rs. 300. Hence court fee has been paid on Rs. 300/- for the main relief of possession theprayer for declaration being subsidery to it.

The value for the jurisdiction is also Rs.300/-

11. The plffs pray as below:-

i. A decree for possession of the suit land free from encorance may kindly be passed in facur of the plffs, after declaring that the lease executed by deft No.1 in favour of deft No. 2 was in voilation of the terms of the agreemen of license under which the suit land was taken by Govt. in 1863-64 and was therefore invalid as against the plffs.

ii. If the possession of the entire land cannot be given to the plffs, then the respective portions of the various plf in the suit land, as set out in para 6(i) to (iv) above, may be ascertained by appointing an expert officer in the office of the Collector or Land Records Dept. Belgaum and seperate portions thus ascertained be delivered to the respective plffs entiled to them.

iii. Future mense profits be awrded to the plffs from the date of the institution of this suit.

iv. Plffs may be awrded to the suit and such other reliefs to which they may be found entitled to, or which the court deems fit to award.

v. Permission may be given to amend the plaint, if found necessary.

This suit coming on this day for final disposa before M.H.Kazi Esq. Joint Civil Judge, S.D.Belgaum, in th presence of the Messrs. B.N.Datar and C.D.Gumaste pleaders for theplff and Mr. B.V.Jakati pleader for deft No.1 and Mr. B.A.Hiremath pleader, for defts 2 and 3, it is hereby ordered that:- the plffs do revover possession of the sui land from the defts.The defts do pay the costs of the sui the plffs together with the future mense profits from the date of the suit till delivery of possession of it to the

The defts do bear their own costs.

Bill of Costs.

| | Plff. | Deft 1 | Defts 2 |
|---|---|---|---|
| 1. Stamp for plaint. .. | 30-10-0 | 0-0-0 | 0-0-0- |
| 2. Do for power. .. | 0-10-0 | 0-10-0 | 0-10-0 |
| 3. Process fees | 11-4 -0 | 0-0-0 | 0-0-0 |
| 4. Pleaders fees on Rs. 300 one set. | 15-0 -0 | 15-0-0 | 15-0-0 |
| 5. Stamps on Exs. filed | 5-0-0- | 0-0-0 | 0-0-0 |
| 6. Copying fees .. ... | 8-12-0 | 0-0-0 | 0-0-0 |
| 7. Witness Potagi. | 11-0-0 | 0-0-0 | 14-0-0 |
| Total Rs. | 82-4-0 | 15-10-0 | 29-10-0 |
| Costs not awarded. | | 2-8 -0 | |
| Total Rs. | 82-4-0 | 18- 2-0 | 29-10-0 |

Given under my hand and the seal of the court thi 19th day of January 1950.

Sd. R.B.Shinde.

Clerk.

Sd. M.H.Kazi.

Jt. Civil Judge, Belgaum.

31-1-1950.

Pleaders for the plffs.

Pleaders for the defts.

Suits:
Belgaum.
For recovery of possession of suit property, Survey No. 119 of Hire-Bagewadi in Belgaum District

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 5853
Bombay Castle, 29th April 1950.

Read Government Resolution, Legal Department, No.11131 dated 21st November 1947.

Letter from the Collector of Belgaum No. L.A.W. 690 dated 6th January 1948 forwarding papers and requesting Government's sanction to the defence of the Suit noted in the margin.

| |
|---|
| In the Court of the Civil Judge, (Senior Division) Belgaum. |
| Civil Suit No. 267 of 1947. |
| Chanbasappa Shivarajappa ... Plaintiff. |
| Vs. |
| The State of Bombay ..... Defendant. |

Endorsement from the Commissioner, Southern Division, Belgaum No. L.S.T. 316 dated 2nd February 1948 forwarding the above.

Memorandum to the District Government Pleader, Belgaum, No. 1574 dated 13th February 1948.

Letter from the District Government Pleader, Belgaum, No. J. 57 dated 23rd January 1950 stating that the suit noted in the margin was decided by the Civil Judge, (Senior Division) Belgaum, when the following order was passed and recommending the institution of an appeal

> The plaintiff do recover the possession of the suit land from the defendants. The defendants do pay the costs of the suit to the plaintiff together with the future mense profits from the date of the suit x till the delivery of possession of it to them. The defendants do bear their own."

Letter from the Collector of Belgaum No. L.A.W. 690 dated 9th February 1950.

Telegram to the District Government Pleader, Belgaum No. 2755 dated 25th February 1950 sanctioning the institution of an appeal.

RESOLUTION :- Sanction is accorded to the institution of an appeal in the Court of the District Judge, Belgaum against the decision of the Civil Judge, (Senior Division), Belgaum dated 19th January 1950, on the lines of the brief accompanying Government Resolution, Legal Department No. 5168 dated 13th July 1945.

By order of the Governor of Bombay,

Original

R.M.Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Issued
29/4

Facsimile for signature
Index is at Pp. 16 and 17

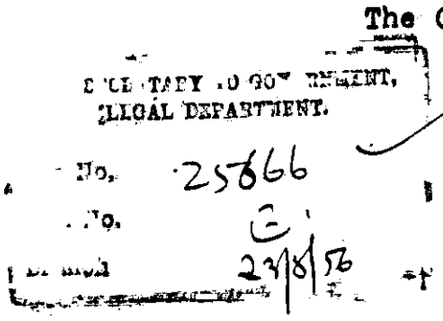
28/4

KGM.
27.4
28.4

No.
Office of the
Government Pleader, High Court,
Bombay, d/- 20th August 1956.

To

The Collector of Belgaum,
at Belgaum.




Sub: S.A.No. 1300/53 in C.A.No. 73 & 109/50
in C.S.No. 267/47.
Chanbasappa Shivarayappa Fadi-Patil
Vs.
The State of Bombay.

...

Sir,

With reference to your endorsement No. LAW/690 dt/- 10-2-1954 on the above subject, I have the honour to inform you that the above Second Appeal came up for final hearing before the Hon'ble High Court, Bombay, on 2nd July 1956 and the following order was passed:

Coram: Bavdekar, J.

"Appeal dismissed with costs."

2nd July 1956.

Yours faithfully,

For Government Pleader, High Court.

No. 9336

Copy f.w.c's to the Remembrancer of Legal Affairs, Bombay, with reference to his letter No. 12594/E dated 16th June 1955 on the above subject.

LD

Submitted
R.D may be
informed accordingly
N.R Review may be
effected.

25/6

Sd/(ML) 25-6

M. 1521
24/6 N. 12 to RD on 19168/E
dt= 27/6/56

Isolato
ASO
27/6

File in S. Bol. 1/45

28/6